

Exhibit 11

UNITED STATES DISTRICT COURT
FOR THE EASTERN OF VIRGINIA

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CHMURA ECONOMICS & ANALYTICS, LLC,

Plaintiff,

vs. Case Action No. 3:19cv813

RICHARD LOMBARDO,

Defendant.

~~~~~

Remote Video/Stenographic deposition of

ELI AUERBACH

May 5, 2020
11:35 a.m.

Taken at:
Penny Sherman
5102 East Farnhurst Road
Lyndhurst, Ohio

REPORTER: Penny Sherman

JOB NO. 179590

APPEARANCES:

On behalf of the Plaintiff:
McGuireWoods, by
HEIDI SIEGMUND, ESQ.
800 East Canal Street
Richmond, Virginia 23219

On behalf of the Defendant:
Koehler Fitzgerald, by
CHRISTINE COOPER, ESQ.
1111 Superior Avenue
Cleveland, Ohio 44114

On behalf of the Witness
Gottschlich & Portune, by
TERRY POSEY, ESQ.
201 East Sixth Street
Dayton, Ohio 45402

ALSO PRESENT:

CHRIS CHMURA

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EXHIBIT CUSTODY

EXHIBITS RETAINED BY ATTORNEY

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1 Auerbach

2 ELI AUERBACH, of lawful age, called for
3 examination, as provided by the Ohio Rules of Civil
4 Procedure, being by me first duly sworn, as
5 hereinafter certified, deposed and said as follows:

6 EXAMINATION OF ELI AUERBACH

7 BY MS. SIEGMUND:

8 MR. POSEY: I'd like to just open with
9 one matter now that we're sworn in.

10 Mr. Auerbach may have some ongoing
11 confidentiality obligations pursuant to a
12 contract arrangement, and we anticipate that
13 Chmura will be maintaining those pursuant to
14 the protective order in this case. And he's
15 testifying on Chmura's request and pursuant to
16 Chmura's -- his obligations to Chmura. Chmura
17 will be maintaining those.

18 MS. SIEGMUND: Okay, thank you.

19 Q. Mr. Auerbach, have you ever been deposed
20 before?

21 A. No, I have not.

22 Q. Okay. So I'm just going to go over a
23 couple of ground rules with you. As you know,
24 you're under oath, so it's just like we are sitting
25 in a courtroom with a judge and a jury.

Auerbach

We're going to try not to interrupt each other because Penny is taking down everything we're saying, so try to allow me to finish my question before you start talking, and I'll try to allow you to finish before I start talking. It is a little more complicated than usual with lag time through the technology, but we'll try to muddle through that.

Try and make sure your answers are audible; no huh-huh or uh-huh, so that the court reporter can take everything down. If you don't understand any of my questions or you if can't hear me or you need me to clarify anything, just feel free to say so and I'll try to rephrase.

If you need a break -- I don't think this is going to take all day anyway, but if you need a break, just let me know.

And most importantly, you and I have met before, and you have been on calls with Mr. Saterwight (phonetic) and me and other members of Chmura's leadership, and those conversations are attorney-client privilege, and that privilege belongs to Chmura. You're not entitled to waive that privilege, and I don't want to get into any

Auerbach

conversations that you and I had that will put that advice from Chmura under attorney-client privilege. And so I'll try to stay away from those things, but I'm not trying to get into what Mr. Saterwight and McGuireWoods told me such and such, because all of that is privileged. And by the same token, I'm not going to try to get into your conversations with Mr. Posey as those are protected by attorney-client privilege as well.

Does all of that make sense?

A. Absolutely.

Q. Thank you. So with that, do you have any medical conditions, or are you on any medications that would prevent you from testifying completely and accurately today?

A. No.

Q. Is there any other reason you can think of why you can't testify truthfully and to the best of your ability today?

A. No.

Q. What did you do to prepare for your deposition today?

A. I had a half-hour conversation with my attorney and that's about it.

1 Auerbach

2 Q. Did you review any documents?

3 A. I reviewed the e-mails that were sent
4 over in relation to this, but that was all I had
5 done.

6 Q. Is that your e-mail as far as our
7 conversation about setting up the deposition?

8 A. That is correct.

9 Q. Did you talk to anyone other than your
10 lawyer about today's deposition?

11 A. No, I did not.

12 Q. Thank you. So you started with Chmura
13 in April or so of last year; is that right?

14 A. Yes.

15 Q. Do you recall your start date?

16 A. I think it was something like April 6th.
17 I don't remember the exact date, but I believe it
18 was the beginning of April.

19 Q. And what was your title when you started
20 with Chmura?

21 A. Sales manager.

22 Q. What were your responsibilities as sales
23 manager?

24 A. Primarily to work with leadership to set
25 goals and benchmarks for sales team regarding new

Auerbach

accounts, renewals, total sales, new business and to effectively manage the sales team; make sure they are hitting their appropriate benchmarks, in terms of outreach, calls, e-mails, following up with connections made through LinkedIn or conferences.

And to be there sort of as a mentor. If they have questions or get stuck with a certain client or prospect, how to work through that.

Q. And we'll follow up on some of those as we go.

Did you sign an employment agreement with Chmura?

A. An employ -- I would say, in general, no, I did not. I signed what was effectively an offer letter.

Q. And did you sign a confidentiality agreement with Chmura?

A. Yes, I did.

Q. And what -- I know Mr. Posey touched on this at the beginning of the call, but what are your understandings as far as your obligations to Chmura regarding confidentiality?

A. Anything that pertains to intellectual

Auerbach

property, anything regarding financial information or anything about the client-list prospects, anything related to the software platform itself, none of that can be discussed with, you know, anybody.

Q. Did you work from the office most days when you were a sales manager?

A. Did you say could I or did I?

Q. Did you.

A. Yes. I would say, almost every day I worked from the office.

Q. And what was your typical schedule?

A. When I first started, I was typically in around 8:00, but I would say within just a few weeks, I started coming in at 7:00, just to have that first hour where there was very little activity. There was a lot of work I could get done in the morning regarding each individual account manager. And I would usually stay sometime between 4:00 or 5:00, depending on what the end of my day looked like.

Q. Did you ever leave for lunch or to run errands during the day?

A. Sometimes, sure; maybe once or twice a

Auerbach

week, just to be able to get outside and take a walk.

Q. But, generally, your schedule was 8:00 to 4:00 or 5:00 and then transitioned to 7:00 to 4:00 or 5:00?

A. Yes.

Q. And whenever you came in to Chmura's office, you had to use a badge to swipe in; is that right?

A. That's right. Yeah, we had a key pod where you would use to enter, and then you didn't need it to leave.

Q. How often did you travel from the office for conferences?

A. I would say -- I mean, there were some months not at all. Other months there might be two conferences. So I would say, during the time, the entire time I was with Chmura, I probably traveled seven or eight times total. That includes a couple of trips to Richmond to visit the headquarters, if you will, for the company.

Q. And when you would travel either to go to Richmond or go to a conference, how long would you be gone?

Auerbach

A. Probably never more than a few days, just depending on where it's at, whether we flew, drove, circumstances, it would be maybe two or three days.

Q. Were those usually weekdays, or did you sometimes travel on the weekend?

A. I would say the majority were during the week. I mean, there might be a travel on Sunday, or coming back later, you know, somebody might come in on a Saturday. I think one time on a Saturday from a delayed trip, but usually during the week.

Q. And were the account managers that you supervised, were they required to keep particular office hours?

A. In general, yes. That's the expectation. I think most people probably worked 8:00 to 5:00 on the sales team. There were a few people that started coming in early, like at 7:00, sometimes earlier, usually with the intent to be able to leave earlier.

So there was some leeway; if you came in an hour early, you could leave a little earlier. And likewise, if you came in an hour later, you would stay an hour later.

Auerbach

Q. Was Mr. Lombardo one of the account managers that tended to come in early?

A. Yes. Every single day.

Q. What time did he usually arrive?

A. I don't know the exact time. The only thing that I do know is, the days he worked in the office, almost every single time when I arrived by 7:00, he was already there working on his computer.

Q. And you said, the days that you worked in the office, he had an agreement during at least part of your tenure where he would work from home a couple of days a week; is that correct?

A. That is correct.

Q. And how many days a week did he work for home, if you recall?

A. Two days.

Q. So on the three days a week that he was in the office, he normally was there by 7:00; is that right?

A. Yes. Usually it was before. But, yes, for sure by 7:00, he was already there.

Q. And was he already working from home two days a week when you started at Chmura, or did that happen under your supervision?

Auerbach

A. If I remember correctly -- I don't remember exactly -- it was either he had just been allowed to or shortly after I started I think he did.

Q. And Mr. Lombardo was the senior account manager; is that right?

A. Yes, that's correct.

Q. And was he the most senior of all the account managers by the time you started?

A. Yes, that's correct.

Q. What were his job responsibilities as a senior account manager?

A. Primarily to generate new business, make sure he gets a high renewal rate, attend conferences when appropriate. Those were his primary responsibilities.

Q. Did he have any other responsibilities?

A. I mean, there's some reporting requirements in terms of providing information regarding prospects or, you know, working Stan regarding certain deals or opportunities he was working on. I mean, but in terms of formal requirements, that was it. That's the only thing he contributed to.

Auerbach

Q. We're going to get into a little more of what he informally did as well, but as far as making sales and generating new business, I want to talk about the pricing a little bit.

Mr. Lombardo was authorized to give up to a 30 percent discount to close a deal, correct?

A. That is correct.

Q. What was the average price of the JobsEQ software that he was selling?

A. So it's sort of difficult to answer, because there are a number of tiers. So some of them could be extremely large deals that would kind of throw off the average. But, I would say, when you're looking at the most consistent price range, you are probably talking about somewhere between 7- to 10,000.

Q. So a 30 percent discount off of a 7- to \$10,000 deal, that would be a couple of thousand dollars per sale; is that fair? I know that's very -- (inaudible) -- but is that roughly right?

A. Sure, yes. That is correct, yes.

Q. And he was not required to ask your permission to get that 30 percent discount, correct?

Auerbach

1
2 A. So, technically, he had been told that
3 he had the ability to do that, but being very
4 truthful, oftentimes -- and this predated me,
5 because this is what was explained to me was that a
6 lot of times there was pushback regarding giving
7 the discounts.

8 So from the time I started until I left,
9 not only did he never give a discount of that size
10 that I recall, but almost any time he was going to
11 deviate in any way from what the pricing model was,
12 he would always come to me first.

13 And usually it wasn't -- it might be,
14 for example, he might give them an extra user to
15 the platform or a small percent discount that would
16 be equivalent to say what the renewal rate would
17 be. But never, to my recollection, was he giving
18 substantial 20, 30 percent discounts.

19 Q. So he did have the authority to give a
20 20 or 30 percent discount, but he usually did not
21 use that authority; is that fair?

22 A. Yes. In the vast majority of cases, he
23 would not do that.

24 Q. And you said, Whenever he deviated from
25 the pricing model, he would come to you first; what

Auerbach

did you mean by that exactly?

A. Essentially, he would come to me and say, Here is a price that I would like to give, and here's the reasons why. We would look at what the original pricing would be and then evaluate where he wanted to go.

I would say, a very typical scenario is just, a client, it's just a little bit above what they can pay for one reason or another, so we would look at what a price would be that would fit their budget. That's a very common scenario about why he would make an adjustment or ask for an adjustment to the price.

Q. So is it fair to say that he would come to you with a recommendation about what he thought needed to be done on pricing to close a deal?

A. Yes, that's a fair way to say it.

Q. Did you ever tell him, No, I don't think that's appropriate, or did you typically follow his recommendations?

A. In the majority of cases, I followed the recommendation. There might have been a handful of instances where I might have just had a different perspective on how he could initially approach it.

1 Auerbach

2 Or maybe, oftentimes, if any account
3 manager came to me I would say, Well, I'd be more
4 comfortable lowering the price if they were willing
5 to sign a multiyear deal. So we would always
6 tackle that first to see if that would work. And
7 if not, then we'd say, Okay, how can we adjust the
8 first-year pricing.

9 (Discussion off the record.)

10 Q. So you might provide some additional
11 feedback and suggestions to tweak his
12 recommendations, but in most cases, you went with
13 what you thought was appropriate?

14 A. That is correct.

15 Q. And I know you mentioned, he had perhaps
16 received some pushback on discounts in the past.
17 Is it fair to characterize it as, he wanted to keep
18 you abreast of all of the offers he was making as
19 opposed to he formally required to seek permission?

20 A. Correct. It was more of a working
21 relationship where you were given freedom of
22 latitude. And in return, he and I, we worked very
23 closely together to make sure, it was not only a
24 fair deal for the organization, but, you know, and
25 he's getting the maximum opportunity on the

Auerbach

commission side, so there's a good balance there.

So we worked very closely to do that on most deals.

Q. I mean, he was very motivated to get his commissions, wouldn't you say?

A. Yes.

Q. And so he would have strong opinions about what sort of pricing would be necessary or appropriate to get a deal done; is that fair?

A. No. I would not say that he had very strong opinions. I think by the time he would bring a deal to me, he was extremely confident that it was going to close and they would sign a contract. This was just a function of how to get the price in the appropriate place. So we know they're interested, we know they want to sign, but there's a lot of different elements at play in determining a price.

You know, it's maximizing for the organization, it's maximizing his commission. It's putting the price in a place where the client can afford to feel comfortable with what they're investing.

Q. And as far as, prior to when he would come to you basically ready to close a deal, was he

Auerbach

left pretty much to his own devices as far as how to identify new prospects?

A. How to identify new prospects; is that the question?

Q. Correct.

A. Yes. Yes, to my knowledge. Other than opportunities that might have come through, say, the sign-a-page on our web page, he was given complete autonomy to determine how to go out and develop a new book of business or any new prospects. Whatever opportunities came his way he was permitted to pursue that.

Q. Would he decide how to approach those prospects, like, whether he was going to send an e-mail or make a phone call, or when to follow up, all of that sort of thing?

A. Yes. So he had the authority to determine that method of how he would work.

Q. And I know that we talked a bit in other depositions about the importance of the demo process; can you explain to me what that is?

A. So the platform is very unique. There's only a couple of companies that offer it. So there's a lot for any entity that's seeing this for

Auerbach

the first time to absorb. There's a lot that the platform can do. So what is offered is a demonstration of what the platform can do that typically, I would say, between 45 to 60 minutes to get through the whole thing.

And, essentially, what you're doing, through the many conversations leading up to it, you would craft the demo based on what you know that was what the organization's needs are.

Then after the demo is when you sort of follow up with any inquiries. There might be follow-up demos, just so they understand what the platform can do and that they're comfortable with the idea of using it.

Q. And Mr. Lombardo decided how to craft and tailor those demos based on his conversations with these prospective clients; is that right?

A. Yeah, partly. So, I mean, there were some standard components that we always wanted to make sure were highlighted.

Oftentimes, again, because there was a lot of unique features to the platform, there was a lot that the account managers understood should be presented, so that even if they didn't realize they

Auerbach

needed it, once they saw it, they'd understand how it would work for them.

So there were a handful of things that really were required to be in there. There was sort of an order of operation that was designed so that the presentation would flow a certain way.

And really, the only difference was, if it were an organization in the private market that had no interest in education, then maybe you would pull back on some of those elements and incorporate other ones that are more ancillary but aligned with what they need. So that was kind of where the autonomy came in.

Q. So it's fair to say that there were some things and components of the software that you would always cover in a demo, but as far as how to make it the most appealing to a particular client based on his or her needs and the industry, the account manager had the freedom to do that; is that right?

A. Yes.

Q. And we talked a bit about what the account managers did to obtain new business. What is your understanding of what an account manager

Auerbach

had to do to earn a full 15 percent commission on an initial sale?

A. The standard was, they would cultivate a lead, and that lead can come from a number of different sources. But, once they had a lead in their hands, their responsibility is to pursue it, to put together a software package that meets their needs, whatever additional components might be added to it, and then work to a point where they can fully execute a contract and have our team help them get set up and using the platform.

Q. So if somebody came in and there was already a license agreement in front of the client and that client was kind of handed over to a new account manager, that would not result in a full 15 percent commission; is that right?

A. So I think it depends on the circumstance. So I think there's two different ways you can look at it.

One of them is, let's say an account manager, someone left the organization, and the client that had been given a contract prior to that returns it, it's really a judgment call, depending on, you know, what the terms were for that account

Auerbach

manager leaving and a bunch of variables.

It is possible under that circumstance that an account manager would not get the full amount, but in most other instances, yes, I think that they would get it.

So, I mean, it's kind of understood in many cases where, for whatever reason, if there wasn't another account manager tied to it and no reason, like someone else would get that commission, I would say, in most cases, they would get that full commission.

Q. But, it was your understanding that 15 percent commission was not guaranteed on every single signature. There were cases, there was some discussion and adjustment call that occurred; is that right?

A. Yes. That wasn't the standard, but that did happen.

Q. And, to your knowledge, is there any difference in, as far as calculating commissions based on how the lead was found, like, if it came in through the website versus if it came through an outgoing call, that sort of thing?

A. My understanding was, it would be

Auerbach

15 percent regardless. There might have been some isolated incidents for one reason or the other where they'd say, No, this is not worth 15 percent, it's only worth X. But, I would say, in the vast majority of the time, in most instances, it was 15 percent.

Q. And what was Chmura's policy on how the account managers got the commissions on a multiyear deal?

A. Well, it changed a couple of times. I think early on, if I remember correctly, they would get paid the full commission. So if it was 15 percent for two years, they would get the full amount. At some point, I don't recall exactly when, that changed where they get the 15 percent on the new business for just the first year, and then they had to wait the following year to get their renewal commissions.

Q. Was that ever communicated in writing anywhere that you would get the full 15 percent commission for multiple years on a multiyear deal?

A. I'm sorry. No, no, that's not correct. I don't believe they were getting 15 for both years. I know that there was discussion about it.

1 Auerbach

2 Again, prior to it changing, it was
3 never clear to me exactly what it was. I know that
4 some of the account managers said, previously it
5 was 15 percent for the multiyear. Then my
6 understanding was, it was 15 percent for the first
7 year, 3 percent for renewals after that, but they
8 would still get that all at once.

9 And then it changed probably later in my
10 tenure being there, where you had to wait each year
11 to get the renewal. That's where I believe things
12 ended up. At first it was only verbally relayed.
13 There was a lot of pushback from some of the older
14 account managers. And then I believe, if I
15 remember correctly, HR wrote it out that every
16 account manager had it and understood what it was
17 going to be.

18 Q. And who in HR would have done that?

19 A. I would guess during the time period, it
20 was probably Aisha Ortiz, who's the HR director now
21 --

22 (Discussion off the record.)

23 THE WITNESS: Aisha, A-I-S-H-A. I
24 believe the last name is Ortiz, if I remember
25 correctly.

Auerbach

Q. So just to clean that up a little bit.

It was never the case that you would get 15 percent on the first year and 15 percent on the second year for a multiyear deal, correct?

A. I don't know that. It wasn't that way when I was there, but I know that there was discussion by the older account managers that it had been previously, but I don't know for sure one way or the other.

Q. So during your tenure, it was never the case that somebody would get a full 15 percent for a multiple year, correct?

A. I do not believe that instance happened when I was there. But I think, again, 'cause a lot of things that happened early on, things were in transition when I arrived. So my understanding was, there was a period of time previously where you could. From the time I was there, I never saw it happen.

And I think, what the agreement was, my understanding was that they would get, if it was a two-year deal, they would get the 15 percent for the first year and the three percent for the second. And then that changed.

Auerbach

Q. Then, again, just to clarify. I'm only asking, when you got there, nobody got paid 15 percent for both years, correct?

A. That is correct, yes.

Q. Did Mr. Lombardo ever complain to you about not receiving appropriate commissions on deals that closed while you were his supervisor?

A. Just so I understand, while I was there and I was a supervisor, did he ever complain to me about not getting the commissions he should for a deal?

Q. Correct.

A. Okay. I know that he did, but I can't recall the specific deals in which he was concerned with. But, I do know, there were a couple of instances he had concerns.

Q. You said, A couple of; do you remember how many?

A. I'd would -- I'd put in a number that I can recall, maybe two or three.

Q. Do you recall what his complaint was, why he thought he had not gotten the full commission?

A. I think, again, if I can recall. I

Auerbach

don't have any notes pertaining to that time. But, I just think it was a function of partial commissions for one reason or another, or not getting a full amount on a renewal because -- or an example would be, if a portion of the renewal amount was new business, making sure that portion, you got the full amount versus the renewal on the original component. So there was always discussions around that, making sure it was processed correctly.

Q. I'm not sure I heard that before, so explain to me how that works, where you got a renewal --

A. Right. Potentially, in a nutshell, if, for example, they had a standard package and then for a number of different components they increased what they were working with. The way it should work is, whatever that up-sale was, you should get the 15 percent, and then you would still get the three percent renewal on the older business.

So sometimes those things didn't get calculated appropriately, and then he would express concerns over making sure that was calculated the right way.

Auerbach

Q. And do you recall when he complained?

A. To my knowledge, I think, in almost every case. I mean, there were some where the decision was made maybe a partial or split for one reason or another, and he may not agree with it, but those were usually decisions above my management or my control.

Q. What do you mean when you say, they were partial or split?

A. So there might be a reason that leadership would determine, he's not going to get the full 15. For example, it might be a lead that was sent to him by someone in leadership who might have met that person somewhere. So they will determine, Well, we cultivated the initial introduction and all of that, and you might have only done a couple of pieces for it. And he and another account manager may have a different opinion about that.

Q. But, it was always the practice during your tenure there that if multiple people had done the work -- or what was my example earlier, if someone else had gotten the agreement in front of a client, there would be a judgment call; it was not

Auerbach

an automatic 15 percent every time, correct?

A. I would say that's fair, yes. In most cases, there was a conversation about how to approach it.

Q. What about after -- and we're talking about Mr. Lombardo specifically. After a deal closed, did he typically have ongoing contacts with the client after an initial sale?

A. Absolutely, yes.

Q. It's fair to say, he was the primarily point of contact for his clients going forward?

A. Yes, absolutely.

Q. And does that involve answering questions from clients?

A. Yes.

Q. And did it involve showing clients how to use various features on the software they purchased?

A. Yes.

Q. Did it involve troubleshooting?

A. I think it would depend entirely on what type of troubleshooting you're talking about. If it was something related to figuring out how to run a query on something or how to access and use

Auerbach

appropriately certain of the features that were there, then yes, he would do it. If there was anything technical for one reason or another, that would be sent to the appropriate people in IT.

Q. That's a fair clarification. So if it needed to be sent to someone else, would he directly coordinate that process?

A. So for quite some time prior to me being there, and even in the beginning, my first couple of months, they would essentially have a direct line of communication. And oftentimes, they would just send it to someone that they knew would be able to handle it or fix the issue. They would send it directly.

And then a decision was made that there needs to be appropriate channels met to do that. So, essentially, they would be funneled through me, and then I would send it to the appropriate person for review to determine what should be done with it.

Q. And you were saying They there for a minute. So when you say, They would coordinate directly with whoever needed to resolve the problem, that would be the account managers,

1 Auerbach

2 correct?

3 A. Yes, that's correct.

4 Q. But then that changed to be a bit more
5 formal while you there, that troubleshooting that
6 Mr. Lombardo couldn't handle would specifically go
7 through you; is that right?

8 A. That's correct.

9 Q. And did Mr. Lombardo handle some
10 quality-control issues?

11 A. Can you define what quality control
12 means?

13 Q. Sure. I guess it would be related to my
14 previous question. If a customer was having a
15 problem or if they were unhappy with a particular
16 feature of the product the way it was working, he
17 would either address those questions or coordinate
18 a way to address them; is that right?

19 A. Yes, I would say that's fair.

20 Q. Did he ever provide additional data to
21 customers on their request?

22 A. I would say, sometimes it was usually a
23 function of if they needed something very quickly
24 and the resolution, independent of him just
25 producing it, would take too long, he may help them

Auerbach

in that instance, and then he would revisit to help them understand how to do it themselves next time.

Q. And if a customer needed something quickly and he thought it was appropriate to give it to them, did he have to ask your permission to do that?

A. So we had a conversation about it. He initially came to me and said, How, as a sales manager, do you want to handle it?

So my response always was, first and foremost, as long as it's something that's within their software license, I was fine with it.

The other thing was, it depended on -- you know, I think a part of the reason why they were asking. If it was just that they didn't want to learn how to do it, then I would encourage him to help them understand it so that they would become more avid users of the platform.

But, there were a number of instances -- and I think every account manager would have a story of this -- where somebody would have an opportunity to need something or needed data very, very quickly and just didn't have time to be given a tutorial of how to do it. So they would produce

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that information so that they'd be able to use that for whatever their presentation is.

Q. And so would he also provide the, sort of, tutorials to how to run particular queries if they had time to do that?

A. Yes. If it's in the initial -- to just clarify. In the initial enrollment into the software, there was someone dedicated to doing those trainings. But, in the course of a year license, what we all understood was, there were some sort of features that were used more often than others. So three or four months down the road, they might have difficulty remembering how to use some of the other elements, and that's where they would reach out to their account manager and say, Here's what we are trying to do. Can you help us understand that.

And we started to produce, essentially, one pages to distribute to help the account managers be able to walk them through that process.

Q. And I think you mentioned, you were fine with Mr. Lombardo providing data in response to clients' request if it was data within their license. But, did he also sometimes provide

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additional data that typically would be additional charge outside the license?

A. Yes. But, I would also couch that by saying, he would come to me, and we would discuss it every time. And it was usually for a client that either was, you know, a multiyear client, a very good relationship, or what most of the account managers were given permission to do would be with a prospect, to produce some reports, very broad, high level, just to give them something tangible to be able to walk away with and understand the capacity of the platform.

Q. And so when he would come to you to talk to you about something like that, would he say, Here's what the client wants, and I think we should give it to them; like, did he normally have a recommendation about what needed to be done in those circumstances?

A. So early on, I kind of gave him guidance, to help him sort of understand, these are the parameters that I would be comfortable working in. So when he would come to me thereafter, it was always in these situations we talked about, this is what we're going to do, 'cause he would say, Hey,

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can I go and do this? And I would say to him,
Sure, absolutely.

Q. And did he typically ask you in writing
or was that a verbal conversation?

A. He would always just walk into my
office, and we would talk about it.

Q. And is it fair to --

A. Actually -- forgive me. There were some
times where in writing the client or the customer
would send something to him with a request. And
then in some of those instances, he would forward
it to me and say, What are your thoughts on this,
how should we handle this. But, in the absence of
a customer sending it in writing, he would just
come and talk to me verbally.

Q. And was Mr. Lombardo also involved in
helping the new account managers learn how to use
Salesforce and get demos?

A. Yes.

Q. Is it fair to say, he trained them how
to use Salesforce efficiently?

A. I would say no. In general, that wasn't
an area that he tutored or mentored the new people
coming in with.

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Q. Would he be responsive to questions about how to use Salesforce by the new people?

A. Yes.

Q. And is it fair to say, he taught them how to give demos?

A. In general, I would say no. There was a pretty formal process for training on demos that heavily included members of leadership. He might, in the beginning, as all account managers, regardless of whether they were senior or not, they would present demos to the new people, even before they started studying, just to get comfortable with what the content looks like.

Q. And so the purpose of advice and guidance that he provided to them was how to do demos efficiently and appropriately?

A. Yes.

Q. When you started with Chmura, did you ask Mr. Lombardo his process for using Salesforce?

A. Yes.

Q. Let's look at an exhibit. Let me see if I can do this correctly.

(Exhibit C, E-mail Bates No. Chmura40177, was previously marked for purposes of identification.)

1 Auerbach

2 Q. If I've done this correctly, you should
3 be able to see an exhibit.

4 A. Yes.

5 Q. Take a look at that for a second and let
6 me know when you've had a chance to read it.

7 (Discussion off record.)

8 MS. SIEGMUND: So we are now, hopefully,
9 all of us, but at least most of us, are
10 looking at Defendants' Exhibit B, which is
11 Bates Numbered Chmura40177.

12 Q. And, Mr. Auerbach, that looks like an
13 e-mail from you to Mr. Lombardo on April 9th; is
14 that right?

15 A. That is correct.

16 Q. So that would have been close to when
17 you started at Chmura; is that right?

18 A. That is correct.

19 Q. And it looks like you are trying to set
20 up some time to learn Mr. Lombardo's Salesforce
21 process; is that fair?

22 A. Yes.

23 Q. Why did you want to learn that process
24 from Mr. Lombardo?

25 A. I wanted to learn it from all of the

1 Auerbach

2 account managers just to understand how it was, the
3 organization was utilizing Salesforce.

4 Q. And so did you have similar meetings
5 with every account manager?

6 A. Yes.

7 Q. And did you take some of the feedback
8 and, sort of, practices that he showed you and use
9 those to create that user guide that you're
10 referring to in this e-mail?

11 A. Yes.

12 Q. And did you also consult with him about
13 formalizing the account manager onboarding process?

14 A. Yes.

15 Q. We are going to look at another exhibit.
16 (Exhibit B, E-mail, was marked for purposes of
17 identification.)

18 (Discussion off record.)

19 MS. SIEGMUND: The first exhibit is
20 marked as C (sic).

21 Now we have submitted what is marked as
22 Defendant's Exhibit -- Excuse me --
23 Plaintiff's Exhibit B (sic). Can everyone see
24 that?

25 Q. Mr. Auerbach, can you see Exhibit B?

1 Auerbach

2 A. Yes.

3 Q. Do you recognize this document?

4 A. I do not. I don't recall it
5 specifically, but I mean, it seems like something I
6 would send.

7 Q. Down at the bottom of the e-mail --

8 A. Yeah. I'm just saying, I think I am
9 missing part of this, and I don't know why.

10 Okay, hold on. Is it possible there's
11 more -- oh, I see. I'm sorry. It wasn't scrolling
12 at first.

13 Q. Just let me know when you're ready.

14 A. Sure, okay. I finished reading it.

15 I have a vague recollection of this. I
16 mean, I know that I sent the onboarding document to
17 all the account managers. I vaguely recall him
18 writing this in response.

19 Q. So you were dropping an onboarding
20 process for new account managers, and you were
21 asking Mr. Lombardo and Austin Steel and Wilson Cox
22 for feedback on how this process should go; is that
23 basically what this e-mail is?

24 A. Yes, that is correct.

25 Q. And Mr. Lombardo wrote back and gave you

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one suggestion about moving Data Explorer to later in the onboarding process; is that right?

A. Yes.

Q. And what is Data Explorer?

A. It's a tool that allows the user to build tables with a host of different variables, to give them a chance to read a whole host, an innumerable number of variables in one table --

Q. And is that a tool that the account managers use?

A. Use in what way?

Q. I don't know. I mean, perhaps that's not the right word. So explain to me how one uses Data Explorer.

A. So let me clarify what the onboarding document was. I think that's where some of the confusion might be.

The onboarding document was very inclusive of a lot of different components that the new account managers needed to understand. There were elements, you know, in the beginning that broke down standard operating procedures. Some of them related to the organization as a whole, but there were many, many, many pages that explained

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how they should conduct themselves and everything that goes along with being an account manager.

The second component was a demo guide that was put together with feedback from many different stakeholders, to best understand how to go about presenting the software to prospects.

So all of that was combined in one master document during the lofty 90-day onboarding process, everything that they should be comfortable with, familiar with and need to know to be successful in the position.

Q. So where did Data Explorer fit into that process?

A. So in the demo guide, so there's both a specific order that they wanted to present each of the different analytics. And within there is Data Explorer. So it's obviously, based on this e-mail, you can tell, a lot of different conversation about what the appropriate order is, based both on experience of the account managers, as well as what leadership was looking to see.

So data Explorer was just one of the tools that were highlighted in the demo guide.

Q. Okay. So he is just thinking that that

1 Auerbach

2 should come later in the process; is that right?

3 A. Correct.

4 Q. And did you, in fact, follow his advice
5 on that, as far as how Data Explorer should fit
6 into the demo bag?

7 A. I don't recall the exact order we ended
8 up with. But, if I remember correctly, because of
9 the importance and the widespread usage of Data
10 Explorer, I think the intent by leadership was to
11 move it up and to highlight almost immediately into
12 the demo the power of the tool and what it can do.

13 So I think, if I remember correctly, in
14 terms of the first five or six analytics you
15 showed, I do believe Data Explorer was toward the
16 front, but I can't recall specifically.

17 Q. Okay. So you're not sure whether this
18 change actually ended up in the final version of
19 the user guide?

20 A. My recollection is that his specific
21 suggestion did not. We did not put it at the back,
22 if I remember correctly.

23 Q. Did Mr. Lombardo's job also require him
24 to travel regularly to conferences?

25 A. I don't know how you define regularly,

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but I would say, on average, he probably went once a month to a conference, some months more, depending on the season. You know, he might go two months without anything, and he have two months where he goes to four different, five different places. So it just depended on the time of year and what the needs were.

Q. Are the conferences more seasonal, or are they all year round?

A. They're basically all year round, since they're all over the country, different places at different times.

Q. By your recollection, he would go, let's say, average of once a month; is that right?

A. I would say that's fair, yes.

Q. And what -- well, let me ask this first.

When Mr. Lombardo went to conferences, did you normally go with him or did he typically go by himself?

A. I would say, in most cases, he went by himself.

Q. And what were his responsibilities while he was at a conference like that?

A. I would say, the primary responsibility

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2 was to set up a booth where he would try to attract
3 potential prospects to the table and introduce them
4 to the software platform.

5 Q. Did he also meet with clients and
6 prospects while he was there?

7 A. Yes. He would make a very concerted
8 effort to be able to meet with as many clients
9 while he was there face to face. He might send an
10 e-mail prior to say, This is where I'll be located.
11 Would you want me to stop by.

12 Q. And did you direct him as far as, you
13 know, I think you should meet with this client at
14 this particular time, and I think you should meet
15 with this other client at this time, or did he
16 decide the best way to approach that when he was at
17 the conferences?

18 A. He approached it however he felt it was
19 appropriate.

20 Q. And I'm guessing that he typically went
21 to the conferences by himself. You didn't tend to
22 keep track of what type of hours he was working at
23 those conferences; is that right?

24 A. Not formally. But when he traveled, we
25 touched based pretty often. So, you know, with any

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2 account manager that was traveling, we would almost
3 always touch base in the morning and then have a
4 conversation at the end of the day.

5 Q. Just to kind of, you know, recap, This
6 is what happened today or this is what the plans
7 are for today, that sort of thing?

8 A. Correct.

9 Q. Did Mr. Lombardo ever present at
10 conferences, to your knowledge?

11 A. Not to my knowledge, no.

12 Q. Did Mr. Lombardo provide feedback to you
13 or to other members of Chmura's leadership as to
14 which conferences he thought were best and which he
15 thought were not worth Chmura's time and money?

16 A. Yes. That was the standard process for
17 all account managers to put out their thoughts on
18 that.

19 Q. And were you aware of any circumstances
20 where Chmura either decided to go to a conference
21 or decided not to go to a conference based on Mr.
22 Lombardo's recommendation?

23 A. Not often, no.

24 Q. But sometimes?

25 A. Sometimes.

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Q. And after Mr. Lombardo returned from a conference, would he typically take the following day off?

A. No.

Q. Did Chmura allow for a rest day after traveling to conferences?

A. It was an option for the account managers, yes.

Q. But, in your experience, Mr. Lombardo did not always take that rest day?

A. Yeah, I can't specifically think of any instance where he did. I mean, it's very possible he did, but I just don't recall. He almost always worked the next day.

Q. After Mr. Lombardo returned from a conference, how quickly would you expect him to follow up with prospects and clients that he met with at the conference?

I mean, you would want him to do that right away, right?

A. Yeah. I would say, within a couple, three days, he should have reached out to the people he connected with.

Q. And following up that week or within the

1 Auerbach

2 week is important to making sure that Chmura can
3 close those deals; is that right?

4 A. That is correct, yes.

5 Q. And did you have a sense of what
6 Chmura's closing rate is for clients to express
7 interest and request a demonstration at
8 conferences?

9 A. That's a good question. I don't recall
10 the specific number, no.

11 Q. Do you have a sense of -- let me put it
12 this way. Most clients stay with JobsEQ for
13 multiple years; is that right?

14 A. I would say that's correct, yes.

15 Q. Did Mr. Lombardo ever meet in person
16 with clients other than at conferences?

17 A. Not to my knowledge, no.

18 Q. Is it fair to say that he also provided
19 suggestions and recommendations about JobsEQ
20 features that he thought Chmura needed to be
21 competitive?

22 A. Yes.

23 Q. I'm going to walk through a couple of
24 examples of these. And I don't know if all of
25 these were during your tenure, so just let me know

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one way or another.

Are you familiar with Career Concourse?

(Discussion off the record.)

Q. Answer, Yes, right?

A. Yes.

Q. Explain to me a little bit what that is.

A. So Career Concourse includes four different functions. There's a couple of surveys included. One, if I recall exactly, was to help to guide students to specific career paths. The other one, I think, was more cultural sort of expectations where they can match up with.

And then, the two other features, one was putting in your degree or MA degree, to see what jobs could be paired up with that in the open market. And then, if I remember correctly, there was one for military exits where they'd be able to put in their equivalent of their rank and position and see how that correlates to jobs in the market.

Q. And do you know when Chmura implemented that as a feature or as an add-on to JobsEQ?

A. I don't remember exactly. I feel like it was maybe roughly three years ago, maybe four.

Q. So that was before your time at Chmura?

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2 A. That is correct.

3 Q. Do you happen to know whether
4 Mr. Lombardo had anything to do with Chmura adding
5 that feature?

6 A. I don't have any firsthand knowledge of
7 that.

8 Q. Do you know what Megatable is?

9 A. What?

10 Q. Megatable.

11 A. Yes. I don't think it was a feature
12 that was employed before I left, but I have some
13 familiarity with what it's supposed to be.

14 (Discussion off record.)

15 Q. Was that something that was, sort of, in
16 the pipeline while you were at Chmura?

17 A. If I recall correctly, yes.

18 Q. And do you know whether Mr. Lombardo
19 made any recommendations about whether Chmura
20 should implement or add a Megatable feature?

21 A. I don't have any knowledge about that.

22 Q. What about Cliepy; do you know what
23 Cliepy is?

24 A. I've only heard about it. Yes, I've
25 only heard about it.

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2 (Discussion off record.)

3 Q. You said you do know what it is, but it
4 wasn't anything that was in play while you worked
5 at Chmura?

6 A. I don't believe it was. I actually
7 don't even know what it was supposed to be.

8 Q. Okay. What about Firm List; do you know
9 what that is?

10 (Discussion off record.)

11 A. Yes.

12 Q. And do you know whether Mr. Lombardo had
13 any recommendations about whether that was
14 something that Chmura should offer?

15 A. I can't say I have any direct knowledge
16 about that. I believe, if I remember correctly,
17 Firm List was something offered prior to me being
18 there, so I don't know with any firsthand knowledge
19 how it came about.

20 Q. But you said that Mr. Lombardo did make
21 some recommendations about features; can you
22 remember any that he did advocate for or recommend?

23 A. I would say, the number one thing he
24 regularly came to me regarding was the reports that
25 included both the layout information that it

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included.

Q. Can you explain that to me a little bit more; what kind of report?

A. So there were several automatically generated reports that came standard with the package where you could select essentially a region, and you can get a report on a host of economic-related data, workforce development. There was an education report and then an industry spotlight that would essentially focus exclusively on a particular industry.

Q. What exactly was he pushing for with regard to this report?

A. Not all of them, 'cause not all pertained to the clients he worked with. But, the economic development and the workforce development, he felt that the layout and the format and how it was designed was a bit antiquated. And the content that was included didn't give as much flexibility to the clients as they had been asking for.

Q. And do you know whether that was something that he also brought up with Chmura's leadership?

A. Yes, I would think so. That was

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something that he regularly assessed.

Q. And do you know, did Chmura make any updates to those reports in accordance with his recommendation?

A. No, no. Maybe a couple of small things, but he had very substantial lists of suggestions, and the vast, vast majority was never adhered to.

Q. Okay. But, is it fair to say that he did get a couple of the things that he wanted?

A. Well, ironically, for the majority of the time I was there, there were no changes that were made, or very insignificant sort of surface changes. The substantive changes that were being discussed that he was suggesting were essentially the same as all the account managers.

And so I would say, about six weeks or so before he was no longer with the organization, there was a meeting with the entire sales team about the these suggestions. And so he was included in that dialogue, and there was a consensus that as a group we came to that was then presented to leadership.

Q. And that consensus, did that result in any changes?

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A. So what I will say is that I do not recall those updates to the reports being completed prior to me leaving, but while we were there discussing it, there was not a lot of appetite to make any changes to those reports. So the significant number of suggestions were not incorporated.

Q. But it was something that was under consideration at least?

A. So, again, I would say that most of the suggestions were dismissed, and what was under consideration were a handful of more format-related changes. What happened since I was fired, I do not know.

Q. And did Mr. Lombardo ever come to you with suggestions about features that he thought Chmura should retire, other than the report features that we've just talked about that needed to be updated?

A. There might have been one or two specific ones that he felt probably no longer had a role, but there weren't many.

Q. We talked a little bit about Mr. Lombardo's schedule already. When he was

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working from home, was he required to check in with you to say, Here are the hours that I'm working today when I'm working from home?

A. He was not required, no.

Q. So did you have any sense of how many hours a day he did work when he worked from home?

A. Sure. He and I talked very regularly throughout the day, both while he was in the office and while he was home. I would know anecdotally. You know, we would often have calls earlier in the day and again touch base at the end of it.

But, also I was able to track all of the account managers' activities based on what they were doing in Salesforce. So I would be able to get a good idea based on the timestamps on a lot of their activities when they were working and perhaps when they were not.

Q. Does every entry in Salesforce show what time it was added?

A. So if you create some sort of a new record in Salesforce, at the time you created it, it will say what the time and date was. Sometimes the account managers would send their time early in the morning or at the end of the day updating those

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records.

So the timestamps for them, that might show that. But, perhaps in their notes or when they send e-mails to the Salesforce, you can also see when those e-mails were sent or responses or what it is.

So there was a lot of paper trail that showed when he started working and what he was doing throughout the day and when that day ended.

Q. So let me break that down a little bit.

So for Salesforce, with the timestamps on the entries, I think I understood you to say that it would show -- the timestamp would be whenever the entry was added or whenever it was last modified; is that right?

A. That is correct.

Q. So it doesn't show that someone made this change at this time and then made this change at this time; it just says, This is when it was updated?

A. It depends on what the change was. So the overall record will show you when it was last modified. But, if you're putting attachments in, specifically like e-mails, so the general practice

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was, every call and every e-mail would be logged. So if they had an e-mail, they would put the entire content, including the header, the date and time into the e-mail.

So you might have three separate contacts, e-mails going back and forth with a client in the course of an hour. Only the last time you access the record would that show. But, all of the e-mails would then keep track of that dialogue that was occurring.

Q. So you would tend to check on account managers' hours by looking at what time they modified things and so forth and by what time they sent e-mails; is that right?

A. That's correct, yes.

(Discussion off the record.)

(A recess was taken.)

Q. Mr. Auerbach, when you were in the office with Mr. Lombardo, I know you said he typically was in by 7:00. About what time did he physically leave?

A. I know antidotally that it was close to 6 o'clock every night. He always stayed later than I did. There was a never a day I left where he had

Auerbach

left before me unless there was a doctor's appointment or something like that. But, I would generally say, to my knowledge, he would stay to about 6 o'clock at night.

Q. You say, Antidotally. Is that because other account managers told you; what is the basis for your knowledge on that?

A. Well, I know that oftentimes he would carpool with his wife, so she wouldn't leave work 'til about 5:00, and by the time she made it over to him, he would be leaving close to 6:00.

Q. But that was typically after you left?

A. That is correct.

Q. Did Mr. Lombardo ever take a break for breakfast or for lunch during the day?

A. Once in a while he would go locally and get like a breakfast burrito. But, other than that, I can't specifically recall a time I saw him during the workday stop to take to lunch or anything like that unless we as a group, as the sales team, were going out.

Q. About how often would he leave to get breakfast?

A. Maybe once a week that I would know of.

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Q. And then how long would that take would you say?

A. I don't really know because he would not often go after I left. So a lot of the times he would have already gone by the time I get there.

Q. Did he ever run any errands during the day, like go to the post office or anything like that?

A. Sometimes. I didn't really track his whereabouts, but I don't recall it being a regular thing.

Q. Did Mr. Lombardo ever take vacation days?

A. Sometimes; not often. I definitely think he took less than most people did.

Q. Do you know if he worked while he was on vacation?

A. Yeah. I mean there were -- I remember one trip. I think it was, for example, prior to a conference in California, like let's say he was there Tuesday, Wednesday and Thursday.

I remember one specific time that he went out early with his wife. I think he went like Sunday and then was there Monday. And I know that

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he would send me e-mails and communicate in advance of going to the conference.

Q. If he did not have a conference coming up, do you know if he specifically worked on vacation?

A. I would say it would be pretty common. I know if he took a day off here and there, he was still answering e-mails and responding. I'd even, on Saturdays, just on the weekend, I've seen in Salesforce that he had done work.

Q. Any idea how many hours he would typically work on a vacation day?

A. Oh, I wouldn't be able to determine that.

Q. What about on a Saturday; do you have any sense of whether he would just go in and make a couple of updates and then be done or whether was he working all day?

A. I think it just depended. I mean, I don't -- again, it was something that I would see when I would pull Salesforce reports. I would see that he had activity on the weekends, but I sincerely don't know exactly how much time that included.

1 Auerbach

2 Q. I'm going to show you Plaintiff's
3 Exhibit A, hopefully.

4 (Exhibit A, Affidavit of Eli Auerbach, was marked
5 for purposes of identification.)

6 Q. Take your time and take a look at that
7 when it comes through. Let me know when you're
8 ready.

9 A. It's still loading on my end.

10 Q. Has it come through?

11 A. No. It still says, File loading.

12 Q. Should be four pages. Mr. Auerbach,
13 your internet connection might be -- it looks like
14 you're frozen on my screen.

15 A. Let me see if I can just download it.

16 MR. POSEY: The presented version only
17 showed the first page.

18 MS. SIEGMUND: That may be. Let's go
19 off the record for a second, Penny.

20 (Discussion off the record.)

21 A. I've read the second page.

22 Q. Okay. And, actually, that should work
23 for now. We'll come back to this later.

24 But, as for these first two pages -- let
25 me back up even further. Do you recognize this

Auerbach

document?

A. I do, yes.

Q. What is it?

A. This was the affidavit that leadership asked me to sign off on regarding the case with Rick Lombardo.

Q. And did you review it before you signed it and make sure everything was accurate?

A. Yes, I did review it. And to my understanding of what was in here, this was accurate.

Q. So of these first two pages that you looked at, is everything in here accurate?

A. The only thing I would clarify is, some of the stuff talking about his discretion and things of that nature were things included, like, the first page was basically written up, leadership, their attorneys, whomever, kind of setting the stage.

So a lot of that I didn't really amend, because it looked at the totality of Rick's tenure there. And some of this when he first started, I would have no knowledge of.

Q. Did you see anything that was untrue?

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A. Not in this version, but in the previous one, there was a specific statement that I felt was applied directly to me that was inaccurate.

Q. So you did have the opportunity to make changes to make sure you were comfortable with it, right?

A. Correct.

Q. And looking at this today, is there anything in here that, to your knowledge, is false?

A. Not that I can say for sure. The part about the 30 percent, as with the rest of what's on this page here, again, that was prepared for me. And so, to the best of my knowledge, all of that is true.

Q. And we have looked at the second page, and you've confirmed that there's nothing false on this page either, correct?

A. Correct, I think that's accurate.

Q. We will come back to the rest of this exhibit later. I'm going to stop it for now.

Did Mr. Lombardo ever say anything to you before his termination about Chmura owing him overtime compensation?

(Discussion off record.)

Auerbach

A. I do not recall having a conversation with him about that.

Q. So if Mr. Lombardo testified that he told you that he was due overtime, you have no recollection of that?

A. I can't -- I don't recall him sharing that with me. I recall the first time being made aware of this was by leadership. I honestly can't remember if he brought it up. He may have. I honestly can't recall a day where we talked about that.

Q. If he had brought it up, would you have said something to HR or to leadership?

A. Well, that's a tough question. I guess it depends on how it was presented. But, from how I later learned it was, to me, I didn't -- I didn't understand at first the overtime issue. It became very, very complicated. So I don't know that I would have initially recognized it as a problem. But, again, I think it depends entirely on the way it was presented.

Like I said, when I first understood it, there was such a complicated formula involved in it that I didn't really pay much attention to it.

Auerbach

Q. But, to your recollection, the first time you first learned about this potentially being an issue, that came from leadership, not from Rick, right?

A. To my knowledge, yes. That's the first time I distinctly recall hearing about it and understanding what it meant.

Q. And sitting here today, you cannot remember a specific conversation with Mr. Lombardo where he said, I need to be paid overtime?

A. I -- the only thing that I firmly remember is discussions about the commission structure, and if he were to walk away, what would that look like. Those were the conversations that were had.

Q. Okay. So just to clean that up a little bit.

Sitting here today, you do not have any recollection of a specific conversation where Mr. Lombardo said to you that he was due overtime, correct?

A. I do not recall that.

Q. So let's talk about those conversations about the commissions issue and needing a buyout.

Auerbach

So at some time during your tenure with Chmura, Chmura decided to revamp its account manager commission structure; is that right?

A. Yes.

Q. Tell me a little bit about that reorganization plan.

A. Well, there were a few primary components to it. The first one were the territories that each account manager would get. And then the other component was the structure of salary and commissions and how they would be compensated.

Q. Let's talk about each of those. What was the plan as far as the territories?

A. So the idea was to equitably divide up the entire country based on both population as well as total number of existing clients in those territories.

Q. And how is that different from what Chmura had been doing before?

A. So, basically, what they had done for a while was, they had two different verticals that they focused on. So the first one included economic development and workforce development, and

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the second bucket was exclusively education.

And what they did was, they effectively divided the country into two different territories for each of the different verticals. So you had two people, one including Rick that was in economics and workforce development that split the country in two. And then when I came on, we would have only one person working in education.

So given the structure of territories, in order for new account managers coming on to be able to have a region with prospects, we needed to restructure the territories and divide them equitably.

Q. So, and in other words, the way it was previously set up, there really wasn't room for any more account managers; is that right?

A. Yes. Based on the setup at the time, it made it problematic to move in new account managers.

Q. And you said, the second part of the reorganization plan was changing the salary and compensation structure. What were the proposed changes on the compensation?

A. So all of the account managers would be

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moved into a \$60,000 base. All of the senior account managers would be given 65. And then the commissions were going to be changed to 12 percent on all new business. And I believe it stayed at 3 percent for renewal business in that territory.

Q. And did you have any role in coming up with that plan?

A. I would say, I was the primary author to it. I initially designed a compensation structure that I'd shared with all of the sales team members, got their feedback on it and then came up with that new structure and new territory.

Q. Was that your idea, or did somebody say, We really need to reorganize things so that we can hire more account managers?

A. That was primarily from me. That was a problem that I saw, and I was developing a solution.

MS. SIEGMUND: We're going to look at another exhibit. And Christine, this is one of the exhibits that's been marked attorneys' eyes only. Hopefully, this will load better than the last one.

(Exhibit E, Document marked Highly Confidential,

1 Auerbach

2 Bates-stamped CHMURA0201265, was marked for
3 purposes of identification.)

4 MS. SIEGMUND: Penny, we are marking
5 this as Plaintiff's Exhibit E as in elephant.

6 Q. Mr. Auerbach, let me know if this comes
7 through to you. And if it doesn't, I can just flip
8 through it on my screen.

9 Are you able to access that document?

10 A. I am not. It hasn't loaded yet on my
11 side.

12 Q. And are you able to see it yet on the
13 screen what I am displaying?

14 A. I am not. It is loading now.

15 I have on the first page -- I have one
16 page in front of me.

17 Q. Are you able to see the second page that
18 I am now displaying on the screen?

19 A. No. I'm only seeing the one that says,
20 New Sales Structure.

21 Q. I'm going to flip over -- are you able
22 to see anything that I am displaying here?

23 A. I only see something that says New Sales
24 Structure. It's a box with Needed Characteristics.
25 I think it says, Key Features, and I can't read it.

1 Auerbach

2 I only see this one page.

3 Q. Let's give it a minute. I'll go to the
4 page that I want to use, and let's see if it shows
5 up on your screen. And the worst-case scenario, we
6 can e-mail this.

7 A. Okay. It was there and it's gone.

8 Okay. I have a table that shows 2020
9 Sales Compensation Plan - Proposed Structure.

10 Q. Excellent. So I know that we're having
11 some technical difficulties with seeing all the
12 pages, but do you recognize this document?

13 A. I do, yes.

14 Q. And did you make this?

15 A. Yes, I believe so.

16 Q. What is -- so this is originally a power
17 point that we have converted to PDF to be able to
18 use it today. But, why did you make that power
19 point?

20 A. If I remember my intent correctly, it
21 was to show what the compensation would look like
22 if we approached hiring new people. Basically, if
23 we went under this new structure with the \$60,000
24 base initially, and we revised the commission
25 12 percent for new, two percent, what it would look

Auerbach

like in total business and what percentage would go to compensation versus what the revenues would be for the organization.

Q. And then did you come up with the \$60,000 base and 12 percent commission numbers?

A. I believe those were the original numbers that I came up with. There was definitely discussion with leadership.

I mean, I don't have the authority to approve this, so there was discussions back and forth first with the sales team and then with leadership regarding this table.

Q. Tell me how you arrived at needing to change to a base salary of \$60,000 and a 12 percent commission rate.

A. The original amount that account managers was getting was 50,000. So I felt like that in the initial year that they start -- I'm sorry -- they get 55,000 the first year and then drop to 50.

So my initial thought was, if you offset the commission rate from 15 to 12, give them a bump up in salary, from a total compensation perspective, the leadership of the organization and

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the leadership as a whole would gain more. But, it would give more of a financial cushion to the newer hires to be able to live off of a decent salary while it took them the better part of a year to build up their book of business.

Q. And in this page that we're looking at, it looks like on the left-hand side you have listed Rick, Wilson, Sarah, Stephanie, Logan; are those the current account managers that Chmura had at the time?

A. Yes, that is correct.

Q. And then you listed some new hires. And then everyone except for Rick has a base salary listed and a commission rate listed, but Rick's row of this chart is blank, and it just says, Total compensation \$80,000.

Can you tell me why that says \$80,000 for Rick?

A. Correct. Because at this point, there was already discussions, if I remember correctly when this was revised, about how to manage the situation with Rick. We knew going into this proposed structure, to be quite blunt about it, he was going to take a very, very significant hit to

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his total compensation.

So he had been pushing back in the beginning, as had some of the older account managers, but Rick was the one that stood to lose the absolute most.

So by the time this was put together, if I remember correctly, the \$80,000 was essentially the initial proposed settlement amount that I had presented to leadership to say, Even if you paid him the 80,000, if you looked at what the rest of the projections are and you stay on course for, the organization would still come out much, much further ahead and wouldn't have to risk any additional expenditures in things like lawsuits.

Q. And I know that this is going to get tricky, but I'm going to remind you to try to stay away as much as possible from getting into conversations with McGuireWoods.

So with that said, how did you come up with \$80,000?

Did Rick suggest that to you or was that the number that you came up with on your own?

A. That was essentially the number I came up with on my own, but it was a combination of a

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number of discussions. So I had talked with Rick, as well, about what, in his mind, would be a reasonable severance package given what his contribution has been. And his idea of what he thinks, you know, his value has been, what he can do to assist in terms of transitioning everything out.

So I kind of sat down -- I knew he was looking in upwards to 100. I figured he would never get the entire amount he was requesting. But after sitting down and factoring what, if he had stayed for the rest of the year, for example -- because this was a ways from being implemented. But, if he stayed for the rest of the year, what was the projected new business revenue, the new business he would get, his salary. When you factor all of that in, it wasn't that much more to get to 80.

So I figured 80 would be a number that both leadership and Rick would be willing to come to an agreement on for him to be able to exit the organization with his severance package.

Q. Do you recall exactly when you put this document together?

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2 A. I honestly can't. I feel like -- we
3 started looking at these proposed structures. Or,
4 at least I started designing them probably August
5 of last year, as we were looking to hire new people
6 come the fall. So we were trying to map out, if we
7 were going to do that and restructure things, what
8 did that look like.

9 So I think this version was probably
10 sometime in October because that's when these
11 discussions started to really ramp up.

12 Q. And I think you said that by the time
13 you drafted this, you already knew that you had to
14 somewhat manage the situation with Mr. Lombardo
15 because he had been pushing back on this plan.

16 Tell me about your conversations with
17 Mr. Lombardo prior to this document.

18 A. So he was the last one that I spoke to
19 regarding the territory redistribution and the
20 compensation plan because he was the only one that
21 was going to actually lose in the end in terms of
22 what his compensation is.

23 So I first presented this to all the
24 other account managers to understand their
25 perspective and to see if there was any pushback or

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concerns on their part. When there wasn't, or if I was kind of able to explain this so that they were in agreement with it, Rick was the last one I finally spoke to. So --

Q. Let me interrupt you for a second.

Did you intentionally exclude Rick from that meeting with all the other account managers?

A. It wasn't a meeting. I spoke to each account manager one on one. I brought them in, showed them the proposed territories, asked them their thoughts on it and then reviewed what the compensation would look like. And knowing that the commissions were going to go down, but the base was going to go up, mathematically, did they think that that was fair and were they comfortable with it.

Rick, because I've already done the math a number of different ways, there just wasn't a realistic path for him to make even on the low end of what he had typically earned. So I saved the conversation with him for last because I knew it was going to be the most challenging.

So he and I -- and he understood exactly what this meant when he looked at it. And so the first handful of conversations were really

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revolving around, Is there a way to structure this so that he doesn't have to lose what he had. The only viable solution that would have worked is really dramatically increasing his base salary, which, I didn't know, but I was confident the organization just wouldn't do.

And when it finally got to the point where we realized, there just wasn't much more room to try to figure this out, you know, that's when he kind of felt he was being excluded from this, and, essentially, in his words, being pushed out, because they were really leaving him very little choice, in his mind.

Q. When you first created this plan, there was no intention of firing Mr. Lombardo, was there?

A. I don't believe so, no. I think this was before he was even asked to leave. I think this was in the initial stages of developing this structure.

Q. So did you include this \$80,000 number because you just assumed that he would refuse to buy into the new salary and commission structure?

A. I don't think -- I think that row, if I remember correctly, was originally populated to

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show Rick what his total compensation would be.

And the initial conversation that ensued was, is it realistic to the new business income that I was proposing was very, very substantial.

And even then, it wasn't really likely he'd get to the salary compensation he was getting currently. So that's where the conversation began. If I remember correctly, the initial row for Rick was populated. But then, again, there was no way to bridge the gap barring a dramatic increase in base salary.

And to his point, which I agreed with, where he'd be working in his industry, he really saturated it, and he had been there for so many years. And neither one of us could really see a viable pathway to how to get those commissions up. It was just an unrealistic expectation.

So that's when I think -- I don't remember exactly the period, you know, but with the discussions of, Well, maybe there can be a severance package, that's when I believed I transitioned this to say, Okay. Knowing on the -- if you look at the renewal business, that's essentially being divided between -- including his

Auerbach

portfolio being divided between the other account managers, to say, Okay, we have to do something with his book; what would that look like in transferring it over, and then what would a severance for him appear to be.

If I remember the order of operations, I believe that's how it went.

Q. And what sort of reaction did you get from leadership to this \$80,000 proposal?

A. If I remember correctly, I believe I went to Greg Chmura first, 'cause I technically reported directly to him. And I explained the situation and we talked about it pretty rationally. And I said, I think this is the number that would work. And he was a little taken aback by this, but I think, my impression was, he understood the necessity to do this.

I guess I'm -- am I allowed to discuss in detail what these discussions were? I mean, am I allowed to get into those specifics? I mean, this had nothing to do with any legal issue; this was just, sort of, strategy, if you will.

Q. So let's take it conversation by conversation.

Auerbach

So what was your conversation with Greg where you presented it?

First of all, when was that conversation?

A. Well, I know -- working backwards, I know that, I think it was the 17th of October was Rick's last day, so I think maybe this was at the very, very end of September, beginning of October. I mean, things happened very quickly. But, I remember presenting this and saying -- 'cause there was a lot of things on the table, obviously all predicated on the new territories, the new commission structure, trying to hire people, which we were actively doing. So there was a lot of things in there that we were juggling.

So I recall presenting this to Greg. Again, I don't remember the first time he might have seen a version of this table or anything like that. There was other, obviously, slides included. But I remember the conversation as it pertained to Rick. And I felt that my argument to Greg was, I know that it's a difficult number to kind of swallow. It's very unpalatable. But, this is by far, in my opinion, the path of least resistance.

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A lot of this 80,000 was related to what he would have already gotten if he had just stayed for the rest of the year. And this ensured a real smooth transition so that there's no disruption in our renewals or anything like that.

I had the impression at the end of the conversation, Greg was in favor of doing this, but, of course, we needed to have a follow-up conversation that included the entire leadership team. So that was the next conversation I recall having --

Q. Just a second. Let me parse that out a little bit.

So you went to Greg end of September, very beginning of October, and you said, I feel like the only viable path was for Rick to leave, and I think you should pay him to leave; is that a fair summary of your side of that conversation?

A. I would say yes, that's a close representation.

Q. And you said that you were under the impression that Greg agreed. So what did he actually say?

A. I think at first -- I don't remember the

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exact language. I know that I recall, at first, he was put off by the idea. But, again, I have a very detailed explanation why I felt this way. And I think -- again, I don't remember the exact language in the conversation, but I remember the impression I had was that he wasn't opposed to the idea. I don't know that he was set on 80,000, but I think he understood the value of having some sort of a severance package and ensuring a smooth transition.

Q. And did you share this particular slide that we are looking at with Mr. Lombardo that had the \$80,000 number on it?

A. I don't recall showing him the slide, not to say that I didn't. But, I do think I had a conversation with him where I said something to the effect of, If the number fell in somewhere like \$80,000, is that something that you would be comfortable with.

And I recall him saying that that, in his mind, would be a fair trade.

Q. Did you suggest to him that you thought \$80,000 was fair?

A. Not so much. I mean, I didn't really have an opinion one way or the other. This was

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more so, basically, what I thought that leadership would agree to. I didn't give him any suggestions on what I thought the number should be or what he deserved, just what I thought leadership would agree to.

Q. So before we move off of this first conversation with Greg, I'm going to try to show you another exhibit.

MS. SIEGMUND: Penny, this is going to be Plaintiff's Exhibit F as in Frank. (Exhibit F, E-mail, was marked for purposes of identification.)

MS. SIEGMUND: This one is not attorneys eyes only, so I think we're good. Thank you. Give me one minute.

Okay, thanks.

Q. Eli, let me know when that comes through for you.

A. Okay. I think it just takes a while for it to load. It is loading now.

This is just one e-mail?

Q. So I have gone to the bottom of the e-mail chain here to save us a little time on reading the string. So let me know when you're

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ready for me to go back to the previous page.

A. Okay.

Q. So does this refresh your recollection about when you and Greg first discussed this proposed structure that we were just looking at?

A. Yeah. I mean, like I indicated, it was the end of September, roughly that period of time.

Q. Let me know when this next page shows up. I've gone down to the bottom, and I will go up so we can read the e-mails in order.

Mr. Auerbach, can you see those two e-mails at the bottom of this screen where it says, MARAZ201439?

Are you ready for me to move up?

A. Just a moment. Okay.

Q. And to sum up those two e-mails at the bottom of this page, these are Greg's responses to your proposal on the commission structure; is that a fair summary?

A. I believe so, yes.

Q. And moving up to the top, let me know when you've had a chance to read through this e-mail.

A. This one is my response to Greg?

Auerbach

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Q. Correct.

A. Yes, I've read this one.

Q. And this was on Tuesday, October 1st,
correct?

A. Yes.

Q. And you are -- well, let me not put
words in your mouth.

So what were you discussing with this
e-mail?

A. So I had sent over the proposed
commission structure. Greg provided commentary in
whether the power point in Excel that I had sent
him as an attachment -- it's not included here --
and he gave his perspective, whether it was, you
know, optimistic direction we move in or a
pessimistic one.

And so my response was answering the
concerns he has regarding hiring and whether the
business was there or not, whether people get
promoted. And, essentially, my answer was, if the
new business isn't there, then we simply don't hire
new people, and that people getting promoted or new
hires coming on should be directly correlated to
the amount of business that we're doing.

1 Auerbach

2 The last paragraph was essentially
3 trying to get approval to move forward with this
4 quickly. We were in the process of finalizing
5 hiring a couple of new people. And what I didn't
6 want to have happen was for people to be offered
7 positions under current commission structure and
8 then immediately changed after they were hired.

9 So I was hoping that the following
10 conversation with leadership, a decision would be
11 made quickly so that we could have it in place when
12 we're interviewing potential new hires.

13 Q. And in this last paragraph of your
14 e-mail, you say, However, I still -- it is
15 necessary that we present a clear and definitive
16 direction for the account managers once Rick is
17 gone.

18 Do you see that?

19 A. Yes.

20 Q. Why did you say, Once Rick is gone?

21 A. Leadership made it clear that they did
22 not want to continue with Rick moving forward.

23 Q. And so that was prior to October 1st,
24 they made that clear that they wanted him to not
25 continue?

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A. Yes. Yes, very emphatically, actually.

Q. And who specifically said that and what did they say?

A. It's hard to attribute what anyone said, 'cause a lot of these conversations occurred with multiple people. I knew that the general consensus was that they were moving into a new direction that just wasn't going to include Rick.

The conversations with Rick regarding some sort of a severance package, if I remember correctly on the timing, had already started occurring here, so that the expectation was that he was not going to continue being there.

In fact, there was discussion on whether he would be in attendance for the annual conference that the organization put on, as well as other potential conferences that were coming up in, I guess, September and October.

Q. Okay. So let me back that up a little bit.

So you had testified earlier that before you talked to anyone else about this, you spoke to Greg. So that would have been sometime around September 25th, correct?

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2 A. Well, in terms of what I submitted to
3 him is one thing. I'd had a lot of conversations
4 with Greg that were just verbally relayed. So if
5 there was concerns or issues with the sales team
6 regarding their feelings or thoughts on the
7 commission structure or anything like that, I would
8 have already presented it to Greg. I would have
9 already gone to his office and talked to him.

10 Q. So the conversation you mentioned
11 earlier where you told Greg, I think the best
12 option is to buy Rick out, when did that occur in
13 this chronology?

14 A. I'll be honest, I don't recall the exact
15 timetable for how all this played out. I remember
16 the individual parts. I just don't remember
17 specifically the order of operations.

18 Q. And you mentioned that you felt like
19 leadership thought that the company was moving in a
20 direction that did not include Mr. Lombardo.

21 Was that because of the need for the new
22 commission structure and to hire new people? Why
23 did they think that direction would not include Mr.
24 Lombardo?

25 A. So, to be honest about how this came

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about, the seeds of it were planted from the time I started. There were, I can think of definitively no less than two specific occasions well in advance of any of this, where there was an intent to let Rick go. And where in both of those instances, I fought heavily to avoid that from happening.

But, it was made abundantly clear to me from the moment I started that this was the direction they wanted to go, and this was their opportunity to get there.

Q. So you said, there were two instances where it was very clear somebody was trying to fire Rick; when was the first instance?

A. The first one, I would say it was -- it was definitely April of last year. It was within the first month that I started. Even back when I initially interviewed, there were statements made regarding the challenges they were having with him. And a good part of my interview process was how to manage and deal with it.

Once I had started, it was Leslie Peterson by phone, we had spoken and discussed. And her concerns -- discussed her concerns regarding Rick. And she had made it clear then

1 Auerbach

2 that frankly, once the sales team grew enough that
3 she really wanted him to be gone. The next --
4 unless you have questions on that, I'll...

5 Q. Yes. Let's talk about that one a little
6 bit more.

7 So that first conversation with Leslie
8 was over some time in April; is that correct?

9 A. That's correct, yes.

10 Q. Forgive me if I am misquoting you here,
11 but I think you said something like, She made clear
12 that she wanted him gone.

13 Why did she want him gone?

14 A. I would say that the best way to
15 describe it is just that there was a lot of
16 conflict between Rick Lombardo's leadership, the
17 vast majority of which -- the vast majority
18 occurred while I was there. I heard specific
19 incidences that were of concern. I heard it from
20 both sides. I mean, both sides told a very
21 accurate assessment of it. But, there was a lot of
22 animosity and bad feelings between the two
23 entities.

24 Q. So let me ask a better question.

25 What did Leslie say during that call

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about why she wanted Mr. Lombardo gone?

A. So just prior to me starting, they were dealing with an incident regarding Rick Lombardo and a potential offer from another company that had nothing to do with me. I wasn't involved in it. It predated me, but I do know that for quite some time after it occurred, leadership was extremely, extremely angry about it.

And with bringing me on, you know, Leslie essentially said, The goal here is to continue to capitalize on the success we've had, to build out the team, to hire more people. And essentially, in her words, if Rick doesn't come on board and do the things they wanted him to do and act the way they want him to act, she'll have no problem getting rid of him.

Q. And the incident you're referring to is where Mr. Lombardo forged an offer letter from another company, correct?

A. That's my understanding, yes.

MS. COOPER: Objection as to, he has no personal knowledge. He testified he wasn't there when that occurred.

Q. But that's your understanding of the

1 Auerbach

2 situation, correct, Mr. Auerbach?

3 A. As my understanding is, yes, I had no
4 direct relation to it.

5 Q. And so is it fair to say that Ms.
6 Peterson was saying that she wanted Mr. Lombardo
7 gone because he had doctored this offer letter?

8 MS. COOPER: Objection.

9 A. No, I don't --

10 Q. You can answer.

11 A. Well, I was going to say, I don't think
12 -- that certainly wasn't the caveat. I think this
13 was -- you know, again, I was not involved. Prior
14 to me starting, obviously, I can only extrapolate
15 off of the things I saw when I was there. But,
16 there was a lot of conflict over a host of issues,
17 you know, that ranged from how and when
18 compensations and commissions are paid, which
19 conferences to attend. There was always this
20 conflict that existed between them. So --

21 Q. Mr. Auerbach, I'm going to try to focus
22 you on this particular call with Ms. Peterson.

23 Was the offer-letter incident, was that
24 her primary motivation for, as you say, wanting
25 Mr. Lombardo gone, during that call or --

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A. She never --

MS. COOPER: Object. Hold on. Before we all talk over one another, let Ms. Siegmund finish her question.

I would like to object to it, and then you can answer.

I'm going to object on the grounds that he has no personal knowledge as to what Ms. Peterson's motivations were.

MS. SIEGMUND: That's fair. I'm just asking what she actually said.

A. Yeah. So there was no specific motivation that she gave. There wasn't a specific incident that she cited or anything like that. It was just her desire for him not to be with the organization any longer.

Q. And you mentioned that you fought to prevent Mr. Lombardo from being fired. What did you do in response to that conversation with Ms. Peterson to prevent Mr. Lombardo from being fired?

A. Well, essentially, what I had conveyed was, I had just started, and I just wanted an opportunity, you know, before any changes were made, just to get to know everybody and understand

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what their working style was and to see if he and I could develop a cordial enough relationship where he would be the team player that they were looking for and what they defined as being acceptable.

Q. And Mr. Lombardo obviously was not fired at that point, correct?

A. Correct.

Q. And then you mentioned there was a second instance prior to October 2019, when this came up; when was that second instance?

A. I don't remember the exact timeframe, but I feel like it was somewhere around August of last year where I had made a trip -- yes, it was August because it was immediately following the resignation of our second-most tenured account manager. So I was traveling to Richmond to spend a day with that account manager to transition over his accounts.

The night before, I went to Leslie Peterson and Chris Chmura's house for dinner. And while dinner was being prepared and we were discussing various points of strategy, we had only been in the infancy at that point, as I had said, regarding commissions. And I did express that

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there were concerns by Mr. Lombardo.

And the immediate reaction from both Chris Chmura and Leslie Peterson was, they would be happy to fire him right then and there.

And my immediate response was, I don't think that's necessary. I think that, you know, Rick and I need to talk this through. I don't believe, at that point, I had even brought up the idea to the account managers about the -- actually, it was a different structure entirely.

What was shown here was what evolved a month or so later. The original plan was dramatically different, but regardless, it was going to mean moving territory for Rick.

Q. So was it your understanding from that conversation that they would be willing to fire him if he would not agree to a new structure?

A. No. They were saying, if I wanted to, I have the latitude to go and fire him that day if I wanted.

Q. Did they say why?

A. I think the -- this was in the context -- I can't say what their specific motivation was. This was in the context of talking

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about the need to transition to a new territory and commission structure.

And I had expressed that in the course of these conversations that had just started to come about, in the course of these conversations, you know, Rick is a very smart guy and understood what the map would look like, and understood that in any scenario where we're reducing territory were reducing his opportunity to gain commission.

So once I had explained his feelings on this, their response was, If you want to, you can go ahead and fire him right now, to which I said, No, that won't be necessary.

Q. And is that because you wanted to try and fit him in to this new commission structure?

A. Absolutely. I wanted to do everything I could to try and make it work.

Q. So what prompted you to then change yours to proposing \$80,000?

A. That came far, far later. When this conversation first happened we were just exploring what a potential new structure would look like. I hadn't even formally presented it to the sales team yet. That was the next morning actually.

1 Auerbach

2 So we had a number of conversations,
3 countless conversations regarding this and trying
4 to negotiate, discuss how to make it fair and
5 equitable for Mr. Lombardo, and that's where we
6 just couldn't, kind of, bridge that gap.

7 Q. And we've mentioned a couple of times
8 your conversations with Mr. Lombardo. I want to
9 focus specifically on a conversation you had with
10 Mr. Lombardo on October 3, 2019.

11 Do you recall having a conversation with
12 him about the commission structure on that date?

13 A. I don't deny that I might have; I don't
14 have a specific recollection of that.

15 Q. I'm going to show you a new exhibit.
16 (Exhibit G, Documented conversation with Rick
17 Lombardo dated October 17, 2019, was marked for
18 purposes of identification.)

19 MS. SIEGMUND: This will be Plaintiff's
20 Exhibit G.

21 Q. Mr. Auerbach, let me know when you are
22 able to view this exhibit.

23 A. Sure.

24 Q. Mr. Auerbach, has that document come
25 through?

1 Auerbach

2 A. Yes, I am reading it now.

3 Okay.

4 Q. Do you recognize this document?

5 A. I do, yes.

6 Q. And did you write this document?

7 A. I did, yes.

8 Q. And does this refresh your recollection
9 about whether you had a conversation with
10 Mr. Lombardo on October 3rd about the commission
11 structure?

12 A. Yeah, I recall most of the content here.
13 I'll assume that it was, in fact, October 3rd.

14 Q. You have no reason to doubt that this
15 was inaccurate -- excuse me.

16 You have no reason to doubt that this
17 was accurate when you wrote it, correct?

18 A. I would say so, yes, that's correct.

19 Q. So let's talk about the content of that
20 conversation with Mr. Lombardo on October 3rd.

21 What did you tell him about the
22 commission structure changes?

23 A. Well, essentially, the territories would
24 be redistributed. And then over a period of time,
25 whatever renewal accounts were in each territory,

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whomever the account manager was in that new territory would absorb those renewal accounts.

This was the primary point of concern because the majority of the commissions that Mr. Lombardo was getting was from his renewal book of business. So his concern was that if his territory was being sliced into multiple different components, he was going to lose all of those renewal commissions in any territory that wasn't his. So this was the point of contention we continually spoke about.

Q. And what did you say to him in response to his concerns about his renewal commissions?

A. All I could tell him was, he was 100 percent right, that based on the new structure, there would be -- barring him being given a substantial higher-based salary, there was nothing in this commission structure that would afford him the opportunity to gain what he was earning before.

Q. But based on our conversation earlier, I mean, there was never any intention to purposefully drag him out. It sounded to me like you were just trying to create more opportunities for growth for the company and creating that commission schedule;

Auerbach

is that fair?

A. Correct. It was never my intention to push Rick out.

I was in a difficult situation because we were bringing on new people, and in order for them to be able to build their own book, we had to redistribute the territories. It was an unavoidable consequence the reduced commissions that Rick was going to then get.

Q. And did you explain to him that there was no way to allow a new account manager to have any real opportunity without taking away some of his renewal commission?

A. Yes, I did make that clear.

Q. And what was his response to that?

A. He completely understood. But, his point was more from a business-related perspective, which was, he would not be able to produce at the same level given such a dramatically reduced territory and that the organization as a whole would lose out because of that, especially because it takes a really long time to build a book of business. You're talking, 12 to 18 months.

So he felt that there was, frankly,

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other ways to approach them than to go in the direction we were going.

Q. Did Mr. Lombardo say anything about thinking that leadership wanted to get rid of him?

A. I think it was this conversation, 'cause we had already spoken about this multiple times. I think, you know, we got to the realization collectively between the two of us, there just wasn't anything within the structure that leadership was going to be willing to do. And that's when he said that, to him, it appears they were trying to push him out.

And he expressed to me at that time that he felt like the work he put in over those number of years, the clients he brought on, the renewal business he retained, he felt that there was a value there that he was owed for doing all that work.

Q. And so first, let me back up further. Did you all talk about potential buyout during this conversation?

A. To my recollection, yes, we did.

Q. Who raised that idea first; you or Mr. Lombardo?

Auerbach

1
2 A. I had actually already been thinking
3 about it as a potential solution. And he said --
4 you know, essentially, the idea of putting together
5 a severance package to ask him to leave. And
6 that's where the conversation first started
7 regarding that.

8 Q. And did he propose a number about what
9 he thought would be fair to induce him to leave?

10 A. He didn't. I asked him. I said, If
11 this was something that we pursued and leadership
12 was in favor of it, you know, what would be a
13 number that you would think was acceptable.

14 And so he very quickly said 50,000.

15 I told him, you know, This is kind of an
16 important decision. There's huge stakes involved.
17 So I said, Why don't you go think about it and come
18 to me at the end of the day.

19 He came back pretty quickly thereafter
20 and said, Based on a host of variables, commissions
21 that were paid, new business that was still in the
22 pipeline, you know, the value of doing a really
23 smooth transition and minimizing attrition and
24 renewals, he felt that 100,000 was a reasonable
25 number.

1 Auerbach

2 And if remember correctly, it may have
3 been that conversation or another one, I said --
4 think it was that conversation -- I told him I
5 would present it, but I also cautioned him that
6 it's not going to go over too well initially. Let
7 me see what I can do and what the appetite by
8 leadership would even entertain this.

9 Q. So where did you leave things at the end
10 of this conversation?

11 A. At this point it was, I needed to go
12 talk to leadership and see what happens here.

13 Q. And to your recollection, Mr. Lombardo
14 did not say anything about being owed overtime
15 compensation during this conversation; is that
16 correct?

17 A. Not at all that I recall, no.

18 I mean, this conversation -- again,
19 there was two parts to it. Initially it was, this
20 was like a last attempt to come to some sort of
21 agreement to make the commission structure work.
22 We both understood that it just wasn't going to
23 happen. And that's when he said, you know,
24 basically, let's come up with a number for
25 severance and be done with it, which I had already

1 Auerbach

2 been planning down that track to see if that was
3 something we could do.

4 Q. Did you talk to Chmura's leadership
5 about this conversation?

6 A. I did, yes.

7 Q. What was their reaction?

8 A. I don't -- I honestly don't recall what
9 their initial reaction was. I just remember -- you
10 know, I remember they asked me to write this down
11 and to document it, but I don't even remember who I
12 first told. I don't recall what their initial
13 reaction was.

14 Q. Did they seem amenable to the idea of a
15 buyout, or were they just totally not on board with
16 that at all? I mean, do you have a general sense
17 of --

18 A. So, yeah. Yes. There was one
19 comprehensive conversation that included all of
20 leadership I was involved with, where there was a
21 really intense discussion back and forth about this
22 very thing.

23 And there was a divide. Part of
24 leadership found it to be unpalatable to have to do
25 it, but certainly felt like this was the path to

Auerbach

least resistance and the best way to approach it.

And I was 100 percent in favor of that.

My outlook was, I didn't necessarily care one way or the other. It was more, so what's the path of least resistance; how do we ensure a smooth transition; how do we avoid any additional conflict or issues later on.

There was a general understanding that there would be some sort of severance package that was put together, but there wasn't really specifics on what that number would look like.

My understanding, the impression that I had was, they were leaning toward doing some sort of a package that would be amenable to Mr. Lombardo that they felt was appropriate given the circumstances. But, that feeling, so to speak, dissipated pretty quickly.

Q. Did you tell the leadership that you thought Mr. Lombardo could file a wrongful termination lawsuit?

A. That's part of what I had introduced was, there was a lot of ambiguity well out outside of my understanding as to what he was or was not entitled to, as well as whatever ownership, if at

Auerbach

all, he has over his book of business or any of those logistics.

And my argument was, regardless of who is right or wrong, this is the simplest, quickest and least expensive way to resolve this for everyone involved.

Q. So just to clarify, you did tell someone in leadership that you thought Mr. Lombardo might be able to file a wrongful termination lawsuit?

A. I simply said that if -- I didn't specifically state like wrongful termination or anything like that. My point was simply, not what I thought what he would do, but if he decided to file a lawsuit, there is intrinsically time and effort and cost, opportunity cost involved in that. Everything that would go along with that would detract from the business and the core operation.

So my argument was, if there is a pathway to resolve this right now and never deal with it again, this would be appropriate action to take.

Q. And you mentioned that you weren't sure what Mr. Lombardo would be "entitled to"; was that in reference to his commissions, and then you

Auerbach

mentioned his customers, as well?

A. It was just more general. Like, I don't know anything about the law. So I have no idea from, you know, employment-law standpoint what is or isn't appropriate.

My whole argument included in this whole conversation was, you know, technically, there were still commissions owed to him, both for new business that had come in, renewal business and then new business that was coming down in the next month or two.

So part of my argument was, in terms of a settlement amount that there was already a portion of that that he was owed anyway. So, you know, there wasn't that much of a gap to fill at that point. I was simply saying, being very conservative, whatever he plans on doing, there will be some sort of a cost expended. It's not worth it, was essentially my message.

Q. And though this is all at the very beginning of October when we talked about your conversation with Mr. Lombardo on October 3rd, after this initial conversation about the commission structure, did you and Mr. Lombardo go

1 Auerbach

2 to a conference together?

3 A. Yeah. I believe it was after October
4 3rd, as indicated here. I think we were both in
5 Indianapolis for a conference.

6 Q. And did this issue of a potential buyout
7 come out at the conference?

8 A. It was a brief moment where he pulled me
9 aside and simply asked, Have you had an opportunity
10 to talk to leadership and what was their
11 determination.

12 Truth be told, at that point, my
13 understanding was, they had absolutely no intention
14 of doing a buyout anywhere near what he -- they
15 weren't going to do it, essentially. So I didn't
16 feel comfortable telling him that. I didn't think
17 it was appropriate, so I essentially said, To my
18 knowledge, it's ongoing. And I avoided answering
19 it one way or the other.

20 Q. Other than this brief discussion in
21 Indianapolis, when was the next time you spoke to
22 Mr. Lombardo about his proposed departure?

23 A. I would have to go with what's on this
24 statement here, which was October 17th. At that
25 point, you know, every conversation I was having

1 Auerbach

2 with him as it pertains to this, I was talking with
3 leadership in an ongoing attempt to try to get to
4 some sort a fair reconciliation.

5 So the second part of this documented
6 conversation is clearly the next time I spoke with
7 him.

8 Q. Where did this conversation on
9 October 17th occur; was it in your office, was it
10 somewhere else?

11 A. I think -- so my office is just off to
12 the side of where the sales team worked, so it was
13 in that open area there. It was still pretty early
14 in the day, so he and I were the only ones that
15 were there at the time.

16 Q. And who initiated that conversation?

17 A. I think he had asked me for the update.
18 And, again, because I already knew at that point
19 that they had no intention of doing it, once again,
20 I didn't think it was appropriate, so I didn't give
21 him a clear answer on it. But, I think he sort of
22 had a suspicion maybe that I did know.

23 Q. And so let's unpack that a little bit
24 more.

25 So what did he -- how did he initiate

1 Auerbach

2 that conversation?

3 A. He just simply asked, Do you have any
4 updates regarding your conversations with
5 leadership. And I didn't have one that I was going
6 to volunteer at the time.

7 Q. And this was on October 17th. Did you
8 tell Mr. Lombardo that Chmura was considering a
9 separation agreement that included a payout?

10 A. Yes. I mean, this wasn't news. I
11 essentially said, there's only one of two ways that
12 this can play out. They're either going to offer
13 him, regardless of the amount of money, some sort
14 of severance package, or they were going to say,
15 no, we are just going to move along with the
16 revised territory and commission structure and he
17 can make his own decision.

18 Q. Did you tell Mr. Lombardo how much money
19 was potentially on the table at that point?

20 A. I don't think so, because I knew it
21 wasn't anywhere remotely close to what he was
22 looking for, and I just didn't think there was a
23 point of agitating him or upsetting him by even
24 bringing it up.

25 Q. Did Mr. Lombardo say that he was

Auerbach

thinking about suing Chmura for taking away his commission?

A. Yes. He alluded to the fact that he felt that, essentially, they were going back on what the agreement was when he started, and for all account managers was essentially that, you know, he worked to build this book. And the way it states is that, essentially, in perpetuity, as long as he's managing those accounts and his clients, he gets the commission. And because they were effectively, in his words, taking that away, he was owed some sort of remuneration. He worked for those, and now they were handing it over to other people who had done nothing for those commissions.

Q. Did he mention any other reason why he thought he might sue Chmura?

A. I mean, not that I can recall. I mean, the big thing for him was there was a significant portion of his commission being taken away. That was my understanding.

Q. And did he tell you that he met with a competitor of Chmura while you had been in Indianapolis?

A. He did, yes.

1 Auerbach

2 Q. What did he say about that?

3 A. That was the extent of it, that, you
4 know, he spoke to a competitor, just said hello,
5 shook his hand. That was the extent of it. But, I
6 think, you know, it was something that I think
7 maybe he felt might have had some sort of
8 strengthening in his argument regarding the
9 compensation that he was owed.

10 Q. And was that because he thought he might
11 go work for that competitor?

12 MS. COOPER: Objection; he has no
13 personal knowledge as what to Mr. Lombardo
14 thought.

15 MS. SIEGMUND: You can object to the
16 form and he can ask me to clarify if he
17 doesn't understand the question.

18 Q. Go ahead, Mr. Auerbach.

19 A. I don't -- I would be -- it would be
20 unlikely, I think that would be the implication,
21 because I think he knew, as did everybody, that
22 there was a noncompete. So he knew he couldn't go
23 and work there. I don't think that was a thought
24 that he had. He certainly never shared that with
25 me.

Auerbach

Q. Did you -- so in response to his mentioning meeting with a competitor in Indianapolis, did you say anything about his noncompete agreement?

A. No.

Q. And did he talk about moving his clients over to a competitor?

A. Not directly. I think what he had said was, you know, he has a very close relationship with all of these clients. And the implication was that they renewed Rick-Chmura because of him. And in the absence of him, they're not going to stay.

So the point to that was, going back to what we were initially talking about, the idea of a smooth transition. We knew, given the volume of the book of business, if he just walked away, if there was absolutely no assistance to transition, we would lose a number of clients because of his relationships.

So the point that he was trying to convey was, you know, if he didn't cooperate in transition, or if, you know, there wasn't some sort of an agreement and a settlement that included that, his absence of contributing to that

1 Auerbach

2 transition over would result in a lot of people
3 leaving and going to a competitor because of that.

4 (Discussion off record.)

5 Q. Did Mr. Lombardo say anything to the
6 effect of "Either Chmura is going to pay me for
7 those relationships or someone else will"?

8 A. Yes.

9 Q. And how did you interpret that?

10 A. Well, you know, these relationships he'd
11 developed, it was unlike any other relationships
12 with the other account managers. I mean, he knew
13 these people on a personal level.

14 Everybody, again, clearly understood, it
15 was made abundantly clear by leadership about the
16 noncompete, the inability, you know, to contact
17 these clients after they left. But, eventually
18 that noncompete would expire, and these
19 relationships would still exist.

20 It's not like he can't go to them after
21 the noncompete is over and say, Hey, I'm with this
22 company now, I'd love to talk to you.

23 My opinion -- and this is what I tried
24 to express repeatedly -- was that he had that sort
25 of ability with these relationships that not only

Auerbach

would there be a significant loss in attrition by just the virtue of him leaving, that at some point, he would be able to capitalize those relationships elsewhere, and that would be another wave of loss that we would experience.

Q. And in this document that we're looking at, I'm looking at the end of the second to last full paragraph. It says, "Rick said he would reach out to not only his clients but all clients of Chmura, to sign them over to a competing company."

Is that an accurate statement of what Mr. Lombardo said?

A. Yes, that is correct.

MS. SIEGMUND: Okay, Penny. We can take a break.

(A recess was taken.)

MS. SIEGMUND: And I'm putting up Exhibit B back up as well.

Q. So, Mr. Auerbach, when Mr. Lombardo said that he would reach out to clients of Chmura and sign them over to a competing company, did you think that was something that you (sic) would actually do?

A. In the immediate time of him exiting,

Auerbach

no, I didn't really think so.

Q. So when you say in this document, Rick said he would reach out to not only his clients, but all clients of Chmura to sign them over to the competing companies.

Are you saying you didn't believe him when he said that?

A. No, not at all.

Q. Forgive me, that was a bad question. No, you didn't believe him or, no, you didn't think he would do that?

A. Neither. I didn't believe that he thought he would do it, nor did I think that he was going to do it.

Q. Sorry, that was another bad question.

So what was your understanding, based on this conversation, what Mr. Lombardo would do if he did not receive an adequate severance payment?

A. Well, it would be two primary things -- well, I guess three. But, his opinion, he would file a lawsuit. He felt he was owed money because of the book that he built. He would not do anything to help with a smooth transition through his exit.

1 Auerbach

2 And my understanding was, and he clearly
3 understood that there was a noncompete. He knew he
4 couldn't reach out, but he also knew that that
5 would eventually expire. And then any client of
6 Chmura, any relationship that he had would be
7 essentially fair game.

8 Q. Did he say anything during this
9 conversation of, I will sign clients over to a
10 competitor after my noncompete expires, or did he
11 just not mention the noncompete one way or the
12 other?

13 A. I don't recall the noncompete being
14 mentioned in that conversation. I don't recall him
15 specifically saying that.

16 Q. So he said, I will sign new clients over
17 to a competitor. And your interpretation of that
18 was that he would do that after his noncompete
19 expired; is that right?

20 A. Yeah. I think -- like I said, everybody
21 very clearly understood that a noncompete existed.
22 There was something -- there were some revisions
23 made to the employment agreements to really
24 specifically highlight that. It was something that
25 was discussed often. I have no doubt that he

Auerbach

completely understood that.

Q. Did you send Mr. Lombardo home after this conversation?

A. It was not that long after this when I had spoken again to leadership. I don't recall who specifically I talked to and expressed that, you know, this was becoming a disruption and we needed a solution. It was shortly thereafter, I received a call directly from Chris Chmura telling me to send him home immediately.

Q. And what did she say during that call other than, Send him home immediately?

A. There was very, very little discussed. It was an extremely short call. She simply said, He needs to go home right now, this moment.

That was it. That was the extent of what was said.

Q. And to back up a little bit, you mentioned that after you had this conversation with Mr. Lombardo, you conveyed that to leadership; is that right?

A. Yes, that is correct.

Q. And what did you tell leadership during that conversation?

1 Auerbach

2 A. I don't remember the specific content.
3 I believe it was essentially related to this.

4 And my point being, we had people that
5 were slated to start in the very near future, and I
6 just felt as though this needed all of these
7 things, but Rick concluded we needed resolutions to
8 all of this because it was just becoming
9 problematic.

10 Q. And what was the -- first of all, who in
11 leadership was on that call?

12 A. I don't believe it was a call. I don't
13 believe this was a call. I don't remember exactly
14 whom I spoke to and the specifics.

15 I believe I spoke to Greg Chmura because
16 he was in the office with me. I think I went over
17 to talk to him. I don't recall being on a call
18 regarding this on this day.

19 Q. So you spoke to Mr. Lombardo and then
20 you went and relayed that conversation to Greg,
21 correct?

22 A. Correct.

23 Q. And then the next --

24 A. To the best of my knowledge.

25 Q. And then Chris Chmura called you and

1 Auerbach

2 told you to send to Mr. Lombardo home, correct?

3 A. Correct. As far as I remember, yes.

4 Q. Did you instruct anyone to cut off
5 Mr. Lombardo's Salesforce access?

6 A. I don't think that was a decision that I
7 would make. Everything, I think, related to that
8 would have come from leadership.

9 Q. To your knowledge, was Mr. Lombardo's
10 Salesforce access terminated on this date, on
11 October 17th?

12 A. I can't say for sure, but I believe so.
13 If it wasn't that day, it was very shortly
14 thereafter.

15 Q. And, to your knowledge, did Mr. Lombardo
16 raise this issue as potentially taking his clients
17 elsewhere; did he raise that with other employees,
18 to your knowledge?

19 A. I have absolutely no idea.

20 Q. I'm going to show you an exhibit which
21 hopefully we can get up and running here fairly
22 quickly.

23 MS. SIEGMUND: I am marking this as

24 Plaintiff's Exhibit H.

25 (Exhibit H, Text messages, was marked for purposes

1 Auerbach

2 of identification.)

3 Q. Let me know when that shows up,
4 Mr. Auerbach. Are you able to view this document?

5 A. It's still loading.

6 Q. Has that come through?

7 A. Yes, I just finished reading it.

8 Q. Super. So I'll represent to you that
9 these are text messages that Mr. Lombardo produced.
10 I know that it says, Butch on the right-hand side
11 above the blue text, but we did verify yesterday
12 that that is, in fact, Mr. Lombardo.

13 So does this look familiar to you as the
14 texting between you and Mr. Lombardo?

15 A. Vaguely.

16 Q. And it looks like the gray text on the
17 left are yours, and the blue on the right are Mr.
18 Lombardo's, correct?

19 A. That is correct.

20 Q. So I want to focus on the first text
21 from you on Thursday, October 17th at 11:10 a.m.,
22 you say, I'm on the phone with Richmond now. Give
23 me some time to talk through this with them before
24 you take any steps.

25 Do you see that, Mr. Auerbach?

1 Auerbach

2 A. I do, yes.

3 Q. And so, does that refresh your
4 recollection about whether you had a call with
5 folks in Richmond on October 17th, after your
6 conversation with Mr. Lombardo?

7 A. I don't -- I mean, I have no doubt that
8 there were a number of calls that day. There was a
9 lot happening. It was very unexpected, so I don't
10 have a perfect recollection of everything. I have
11 somewhat of a recollection of this text chain.

12 Q. But, you have no reason to doubt,
13 sitting here today, that when you were texting
14 Mr. Lombardo that you were on the phone with
15 Richmond, you were, in fact, on the phone with
16 Richmond, right?

17 A. I would say that's probably accurate,
18 yes.

19 Q. And you said, Mr. Lombardo, Give me some
20 time to talk through this with them before you take
21 any steps.

22 What did you mean when you said, Before
23 you take any steps?

24 A. I didn't want him to file a lawsuit. I
25 was afraid if the lawsuit was filed, it would

Auerbach

adversely affect the ability to give him some sort of a settlement.

Q. And were you also concerned about him contacting Chmura's clients?

A. No. I had no doubt he wasn't going to do that.

Q. What other steps were you concerned that he might take?

A. Just filing a lawsuit. It was the one thing he talked about repeatedly and I wanted to avoid happening.

Q. When you spoke to Mr. Lombardo on October 17th, do you recall whether you mentioned asking him to do anything in particular with his computer?

A. My vague recollection, I don't remember specifically, and I don't remember what day. I think he might have still had a laptop in his possession. I don't remember. Again, there was a lot of things happening all at once, a lot of questions back and forth. I don't specifically remember that.

Q. At any point, did you tell him to do anything in particular with his laptop?

1 Auerbach

2 A. I can't specifically recall, I really
3 don't. I don't remember.

4 Q. So after Mr. Lombardo was sent home,
5 when was the next time you spoke to him about his
6 employment status?

7 A. I feel like there was a phone call
8 following these texts, but I don't remember
9 specifically. I think there was maybe a 30-second
10 phone call where he was just looking for an
11 explanation as to what was going on. I don't know
12 if it was the 17th or maybe the 18th.

13 I think the extent of what I said was,
14 I'm still trying to figure out what happened here.
15 This was unexpected. And I just need to see, like,
16 I don't know what's going on. And I don't recall
17 there was a time after that where we contacted each
18 other about this.

19 Q. I'm going to show you another exhibit
20 which I'm marking Plaintiff's Exhibit I.
21 (Exhibit I, Documented conversation between
22 Mr. Lombardo and Mr. Auerbach on October 21st, was
23 marked for purposes of identification.)

24 Q. Let me know when that comes through.

25 A. It's in the loading process now.

1 Auerbach

2 It just came up. I am going to read it
3 now.

4 Okay, I'm finished.

5 Q. Do you recognize this document?

6 A. Yes, I do.

7 Q. What is it?

8 A. This is a documented conversation with
9 Mr. Lombardo on October 21st.

10 Q. And you wrote this document, correct?

11 A. I did, yes.

12 Q. And was it an accurate summary of the
13 conversation when you wrote it?

14 A. Yes, I believe so.

15 Q. So there's nothing in this document,
16 sitting here today, that you think is incorrect?

17 A. I think this is accurate.

18 Q. So is this October 21st phone call, the
19 phone call that you were referring to a moment ago?

20 A. I think so, yes.

21 Q. Does this refresh your recollection a
22 bit about what transpired in that call?

23 A. Yes, I would say so.

24 Q. So did you discuss the proposed
25 separation agreement with Mr. Lombardo at that

1 Auerbach

2 time?

3 A. Yeah. I think I walked through some of
4 these logistics. He hadn't read it yet. He only
5 knew that it was a separation letter. So I kind of
6 walked through what some of the highlighted
7 features were going to be.

8 Q. And did he discuss a proposed buyout
9 amount?

10 A. Well, the offer that they had was
11 \$10,000. So that was what was offered in the
12 separation letter.

13 Q. And how did he react to that?

14 A. He wasn't happy. I mean, the number
15 itself as a minimum was considerably less than just
16 the commissions he was still owed. So he was kind
17 of confused as to why that would be the number, and
18 why it was \$10,000. So he was pretty upset about
19 that part.

20 Q. Did you talk to Mr. Lombardo about
21 transferring his client accounts to another account
22 manager?

23 A. Yeah, a little bit. He and I had talked
24 about a handful -- so my understanding -- I don't
25 remember the specifics in the agreement. I'm not

1 Auerbach

2 sure what commissions he was entitled to. I just
3 don't recall.

4 But, I remember at the end of the
5 conversation, I had said to him, My goal would be
6 to try to get him as much of the commissions as
7 possible. And, you know, I think I might have
8 alluded to, If you sign off on this, I'm sure
9 they'll pay it for you and anything else you still
10 have coming.

11 So we did review a number of new
12 business opportunities that he expected to come
13 through, and we walked through what needed to be
14 done with those.

15 Q. Did Mr. Lombardo talk about prospective
16 clients that he met with during the Indianapolis
17 conference during this call?

18 A. I am inclined to say no, just because
19 the only thing we discussed were deals that were
20 actively about to close. And I don't recall
21 anybody from Indianapolis that was just a week
22 earlier that he might have been at that point with.

23 Q. And at the top of the letter -- I'm
24 going to paraphrase here, but, you say that
25 Mr. Lombardo didn't understand why Chmura thought

1 Auerbach

2 that your conversation with him on October 17th was
3 being used as extortion.

4 And you said, "I asked Rick if he could
5 explain how else it can be perceived".

6 Do you see that?

7 A. Yes.

8 Q. So at the time, did you view your
9 October 17th conversation with Mr. Lombardo where
10 he was demanding \$100,000 in exchange for certain
11 debts, did you consider that to be extortion?

12 A. Not even a little bit, no.

13 Q. So why did you say, I asked Rick if he
14 could explain how else it could be perceived?

15 A. Because the separation letter and cease
16 and desist came from Chmura, not from me. And he
17 said he was surprised how they could perceive it as
18 being extortion.

19 And my response to him was, to think
20 about it in terms of, well, how else would
21 leadership take this.

22 So based on the conversation, this was
23 what their perception of it was.

24 Q. So this was not personally your
25 perception, but it was your understanding that

Auerbach

Chmura's leadership viewed it as extortion; is that correct?

A. Yes, of course. Absolutely.

Q. And did you talk to Mr. Lombardo about what would happen if he did not accept the separation agreement?

A. I don't know that I clearly understood what would happen, to be honest. I only knew that he intended to take legal action if he didn't accept it. So I was really trying to push away from that direction.

Q. And during this conversation, did you remind Mr. Lombardo that he needed to return Chmura's property, including his laptop?

A. I believe that was included at the end, which was asked of me to convey by Chmura.

Q. Who at Chmura asked you to do that?

A. I'm sure it was somebody from leadership, but I don't remember who.

Q. After this call on October 21st, did you speak with Mr. Lombardo again before Chmura officially terminated his employment?

A. I sincerely don't recall.

Q. Have you spoken to Mr. Lombardo since

1 Auerbach

2 Chmura terminated his employment?

3 A. I have, yes.

4 Q. When did you speak with him?

5 A. There was -- both his wife and my wife
6 worked for the same company, and there was a
7 holiday party. We had very little conversation,
8 almost virtually nothing, just said, kind of, the
9 hi and hello. That's it, but we saw each other
10 there.

11 Q. Were there any other times since he left
12 Chmura that you spoke to him?

13 A. After I was fired, I don't remember
14 exactly when, he -- I believe he called me just to
15 ask if I would be willing to make a statement and
16 that he got me in contact with his attorneys, and
17 we went from there.

18 Q. Which attorney did he put you in contact
19 with; is that Ms. Cooper?

20 A. I believe -- yes, I believe that was the
21 first person I spoke to.

22 Q. And when did you speak with Ms. Cooper?

23 A. I'm going to take a guess and say maybe
24 January. I don't remember the exact date.

25 Q. And what was the substance of that

1 Auerbach

2 conversation?

3 A. I don't think it would be appropriate
4 for me to share.

5 Q. Have you officially retained Ms. Cooper
6 as counsel?

7 A. I have not.

8 Q. Okay. Then I am going to instruct you
9 that it is fair to answer the question. There's no
10 attorney-privileged communication there.

11 So what did you say on your call with
12 Ms. Cooper?

13 A. Essentially she asked me a series of
14 questions about what I knew and understood around
15 the circumstances for Mr. Lombardo being fired, and
16 I shared what information I had.

17 Q. What specifically did you tell her?

18 A. I would say a majority of what was
19 discussed already is what was covered in that
20 conversation. It was really just fact orientated,
21 that kind of -- as we've been doing here, went
22 through step by step what happened over the last
23 few months of Rick's tenure at Chmura.

24 Q. Is there anything that you discussed
25 that we have not already discussed today?

1 Auerbach

2 A. I mean, I can't think off the top of my
3 head. I know that there was quite a bit that was
4 discussed. A lot of it has already been covered
5 here. I would not be surprised if there were other
6 things, but I would say, anything that's of
7 consequence, we have covered it here.

8 Q. How long was that conversation with Ms.
9 Cooper?

10 A. If I had to take an estimate, I'd say
11 maybe 30 minutes.

12 Q. And have you spoken with Ms. Cooper
13 again since that conversation in January?

14 A. I think only in relation to the subpoena
15 I received for this. I mean, there might have --
16 maybe there was a followup conversation regarding
17 signing my statement and just the logistics around
18 that. And I think there was a brief followup
19 regarding the logistics for this.

20 Q. What statement are you referring to?

21 A. I believe there was a statement that I
22 made that was submitted to the federal courts as
23 part of this case.

24 Q. So did you sign an affidavit that Ms.
25 Cooper prepared?

1 Auerbach

2 A. I did, yes.

3 MS. SIEGMUND: Christine, do we have
4 that?

5 MS. COOPER: You don't. It has not been
6 filed. It has not been used, and I don't
7 believe it's been requested.

8 MS. SIEGMUND: I believe we requested
9 everything related to the allegations in the
10 counterclaim and the complaint, so would you
11 mind sending that over to us?

12 MS. COOPER: I'm not going to commit to
13 that on the record, but I'll look at it.

14 Q. So I think you said you had one followup
15 call, Mr. Auerbach, with Ms. Cooper about this
16 statement; is that right?

17 A. That is correct.

18 Q. What does the statement say?

19 A. I mean, essentially, it was a summary of
20 the conversation that Ms. Cooper and I had had. I
21 don't remember every specific point to it. But, it
22 was essentially, again, a lot of what was discussed
23 here. The facts were essentially the same
24 regarding what had transpired over the last couple
25 of months, and then basically what had transpired

Auerbach

following Rick's exit and the implementation of a new, I guess you would say, an employment agreement for the account managers and the new structure that ended up getting put into place prior to me getting fired.

Q. Okay. So walk me through what you remember exactly about what that statement says.

A. Again, there was a summary of the new commission structure being proposed. All of what we've covered thus far regarding Rick's feelings about it; trying to get to a reconciliation and then essentially, you know, not getting there; he being fired; subsequently filing a lawsuit, and then following that lawsuit, a lot of changes that were made regarding how the sales team would function.

Q. What changes for the sales team did you cover in this statement?

A. So this included reporting criteria for anybody that wasn't a senior account manager. Really, for the entire organization was my understanding that they would all have to begin tracking hours and stay under 40 hours, as well as whatever the new commission structure would be and

Auerbach

just how the distribution worked with the existing sales team that remained.

Q. And what was the new commission structure that you walked through in this statement?

A. It was basically the same as what was presented earlier. The one difference, if I recall, was that the senior account managers were being giving \$65,000 as a base as opposed to 60. Otherwise, I believe everything else in there was correct when it was finally signed into...

Q. Okay. So when were those changes actually implemented?

A. Officially, I think they were -- I mean, I think the start date was November 1st for the commission structure and territories. The organization didn't actually have the employment agreements in place until I think December 1st. But, during that window of time, they also instituted that the majority of the organization, as well, had to start tracking hours to stay beneath the 40-hour threshold.

Q. And you mentioned something about new employment agreements. What new employment

Auerbach

agreements are you referring to?

A. So every person on the sales team signed a new agreement with the organization that essentially outlined what their new base salary would be, what their commission structure would be. And I think there were a few other things added in by HR. I don't remember exactly. I think it was something to the effect of, how many hours I think you can work or something to that effect, and something to do with conferences.

Q. So was this a new offer letter or was it a new contract?

A. So to be perfectly honest, I don't know the correct answer to that. I think it depends on who you ask.

I think the sales team collectively always viewed it as a contract. But, leadership made it abundantly clear that it is not. And I believe, in the revised agreement, they explicitly say that these are not a term full of contracts.

Q. So you mentioned in this statement, you walked through the new commission structure trying to get a reconciliation, the changes to the reporting criteria for 40 hours and the new offer

Auerbach

letters.

Was there anything else that's covered in that statement that you signed for Ms. Cooper?

A. Those are the majority of things that I can recall.

Q. Is there anything else that you can recall?

A. Not at this time.

Q. So we discussed -- I think you said you had two conversations with Rick -- Mr. Lombardo, excuse me -- at the Christmas party and then one where he connected you with Ms. Cooper; is that correct?

A. That is correct.

Q. Have you had any other conversations with Mr. Lombardo since his termination?

A. Other than those, not to my recollection.

Q. And we discussed two conversations with Ms. Cooper. You mentioned that there was a third conversation when you got this subpoena. When did -- well, that would only have happened after you got the subpoena. What did that conversation entail?

Auerbach

A. I think it was just an e-mail. I don't think we spoke by phone. I just sent an e-mail saying that I had received this and that any guidance would be helpful.

Q. And what did she say in response?

A. Essentially made a recommendation for a different attorney, which I then pursued, and we had no further contact that I can recall since then.

Q. Have you ever spoken to anyone else at Ms. Cooper's law firm before today?

A. Not to my recollection.

Q. Have you ever spoken -- Mr. Lombardo also has a local counsel; his name is Tom Powell. Have you ever spoken to Mr. Tom Powell?

A. No, I have not.

Q. Have you ever spoken to Mr. Lombardo's prior counsel; her name was Ann Marie Ahern?

I'm not sure I'm pronouncing that right.

A. Not to my recollection, no.

Q. Were there any conversations or communications between you and Ms. Cooper that we have not already discussed?

A. Not to my recollection.

Auerbach

Q. Have you ever reached out to any other current or former account managers to let them know that you think they might have viable legal claims against Chmura?

MR. POSEY: Objection.

You can answer.

A. The only one that I can recall is, after I was fired, I believe I had reached out to one of the former account managers to say that I thought he was in the same boat as Rick and that's somebody he might want to talk to.

Q. And who did you reach out to?

A. Austin Steel.

Q. We're going to look at another exhibit. (Exhibit J, Text messages produced by Mr. Lombardo between himself and others, was marked for purposes of identification.)

MS. SIEGMUND: This will be Plaintiff's Exhibit J.

Q. Mr. Auerbach, let me know when that becomes visible for you.

A. It is loading now.

Q. And this is 15 pages. Are you able to view the other pages, or are you only able to see

1 Auerbach

2 what I'm displaying right now?

3 A. Just what you are displaying.

4 Q. All right. Well, let's start there.

5 Let me know when you've had a chance to read

6 through this page.

7 A. Okay.

8 Q. I'll represent to you that this is a
9 text chain that Mr. Lombardo produced between
10 himself and Allison Magee.

11 (Discussion off record.)

12 MS. COOPER: I'm objecting on the
13 grounds of relevance and personal knowledge.

14 MS. SIEGMUND: You can object to the
15 form of the questions if I ask something
16 that's not fair.

17 Q. So I'm asking --

18 MS. COOPER: I object to the personal
19 knowledge and as to the relevance, and I make
20 those two objections.

21 Q. Mr. Auerbach, at the top of this first
22 page here, Ms. Magee says to Mr. Lombardo, I just
23 heard Eli say, "He could very easily file a
24 wrongful termination suit."

25 Do you see that?

1 Auerbach

2 A. I see that, yes.

3 Q. Is that an accurate quote to your
4 recollection?

5 A. I don't know, to be honest with you. I
6 don't recall having said that.

7 Q. So you wouldn't recall what your basis
8 might have been for thinking that Mr. Lombardo
9 could file a wrongful termination suit, other than
10 the commission issue that we've already talked
11 about?

12 A. Yeah. I don't know anything about the
13 statement that Ms. Magee is referring to, so I
14 don't know the context in which it might have been
15 said, if it was at all.

16 Q. I'm going to skip a few pages here in
17 the interest of time.

18 A. I'm not even sure I can read that.

19 Q. I'm zooming in. I'm hoping we can read
20 it together. I think we all have to individually
21 zoom on it.

22 Mr. Auerbach, are you able to zoom in on
23 that?

24 A. I was, and then it just disappeared. So
25 I'm still waiting for it to come up.

1 Auerbach

2 Oh, I see.

3 Q. Are you able to read that, Mr. Auerbach?

4 A. I am reading it now. Okay.

5 Q. This is what appears to be a screen shot
6 of a message from you. Does that look familiar?

7 A. It does, yes.

8 Q. And is that a copy of the message that
9 you sent to Austin Steel that we were discussing a
10 moment ago?

11 A. I believe so, yes.

12 Q. Why did you feel the need to reach out
13 to Austin about this?

14 A. Because I felt -- I felt the same viable
15 case that Rick had was applicable for Austin, and I
16 thought he should be aware.

17 Q. Did Austin respond to this message?

18 A. He did not. Not to my recollection, no.

19 Q. Did you have any other communications
20 with him after this?

21 A. I don't believe so, no.

22 Q. And you say "In short, he had a very
23 legitimate case."

24 Without getting into what the substance
25 of any communications with McGuiwireWoods was, why

Auerbach

did you say that?

A. I don't think there's a way I can answer that without divulging any information I was party to in those conversations with the attorneys.

Q. Did you think it was appropriate to share what the attorneys had told you with Mr. Steel?

MR. POSEY: Objection.

A. This was not -- this was not based on what the attorneys told me.

Q. So is it fair to say, this was based off your communications with Chmura?

A. I would say, this was based off of my understanding of the lawsuit that Mr. Lombardo had filed. Based on the statements he was making in the lawsuit, I felt it was a very viable argument that he was making.

Q. Did you have any independent -- I mean, I know we talked about earlier, you didn't really know what overtime was, and you would not have necessarily known that asking for overtime was a problem.

Did you have any independent basis to state that Mr. Lombardo had a legitimate case

1 Auerbach

2 against Chmura?

3 A. At the point where we found out that
4 account manager positions were nonexempt, that's
5 when I knew this was a viable case.

6 Q. So your conclusion that the case was
7 viable was based on the fact that Chmura had
8 started asking account managers not to work
9 overtime; is that right?

10 A. Oh, no. That was before I knew.

11 The moment I knew was when the two
12 elements came together. We saw the lawsuit and
13 understood what he was stating in the lawsuit, as
14 well as the understanding that account manager
15 positions are nonexempt, which means, the statement
16 he was making in filing that lawsuit was completely
17 accurate.

18 Q. Why do you say, Account managers were
19 nonexempt; what's your basis for believing that?

20 A. Because the organization said so.

21 Q. And so that is part of, after
22 Mr. Lombardo left, the organization began treating
23 certain account managers as nonexempt; is that
24 right?

25 A. They started following the rules as it

Auerbach

pertains to nonexempt. Prior to that, they did not.

Q. So it was that change that led you to believe that account managers were nonexempt; is that right?

A. No, not at all. HR had said well before the necessity to document hours, when they were looking into the initial lawsuit filed, the understanding, the explanation was, senior account managers were considered exempt, myself included as management, and account managers were considered nonexempt.

So there was a host of things owed to them regarding things like overtime because they were nonexempt.

Q. But, all of this was after Mr. Lombardo was gone, correct?

A. To my recollection, I believe the lawsuit was filed after he was initially fired.

Q. So none of these changes or this discussion among Chmura's leadership and with HR were ever applied to Mr. Lombardo, correct?

A. Correct.

Q. And you haven't done any independent

1 Auerbach

2 legal research or anything like that about the
3 legitimacy of Mr. Lombardo's claim or about why
4 account managers are exempt or nonexempt, correct?

5 MR. POSEY: Objection.

6 A. I would say, just from my own
7 edification, I might have done some Google
8 searches, or if there were attorneys that I know,
9 just to understanding, just out of curiosity, what
10 the viability of it is.

11 Q. Okay. So you did a little asking
12 around?

13 A. Correct.

14 Q. Okay. Is there any other basis besides
15 the communication from HR and Rick's counterclaim
16 and your own research that led you to believe that
17 Rick's lawsuit was legitimate?

18 A. No. That's it.

19 Q. Now I want to talk a little bit about
20 your departure from Chmura. You've mentioned a
21 couple of times that you were fired, correct?

22 A. That is correct, yes.

23 Q. When were you fired?

24 A. I believe the date was December 16th.

25 Q. And tell me about how that came about.

Auerbach

1
2 A. Well, there was statement prepared on my
3 behalf, which we saw part of in the first couple of
4 pages. Leadership sent it to me the Friday before,
5 so I guess that would have been the 13th. I was
6 asked to review it and get it notarized over the
7 weekend.

8 There were some errors in the document
9 so I took some time reviewing it. I came in on the
10 morning of the 16th. I hadn't yet gotten it
11 notarized.

12 Greg Chmura came over asking me to get
13 it done when the bank first opened, so I did. And
14 then I went and handed him the notarized statement,
15 and he immediately handed me a termination letter.

16 Q. Did he say why you were being
17 terminated?

18 A. I asked him. And the only thing he said
19 was, We were hoping that you would have meshed
20 better with leadership at this point and you
21 didn't. So that was the rationale given.

22 Q. And was that effective immediately?

23 A. It was, yes.

24 Q. Did you have any other conversations
25 with anyone at Chmura to try to figure out why this

1 Auerbach

2 was happening?

3 A. No. I mean, there was nobody that
4 wasn't leadership, and I don't recall having spoken
5 to leadership since.

6 Q. Have you found new employment since you
7 left Chmura?

8 A. I have not.

9 Q. And I do --

10 MS. SIEGMUND: Christine, I'm almost
11 done. I think I'll have you out of here by
12 4:00.

13 MS. COOPER: I would still like to keep
14 the deposition open. I would not finish in
15 the half an hour allowed. There's some
16 questions I would like to ask Mr. Auerbach as
17 well.

18 MR. POSEY: If you're going to continue
19 much longer, I join the agreement to
20 reschedule.

21 Q. And Mr. Auerbach, you mentioned a minute
22 ago that there were some errors in this statement
23 that leadership asked you to sign and that you took
24 the time over the weekend and made some changes.

25 Were you able to make all the changes

1 Auerbach

2 that you felt were appropriate to make sure that
3 that statement was accurate?

4 A. I took out the one big issue that I had
5 that I was pretty animate about, that not being
6 included. There were other areas I felt
7 uncomfortable about, but really felt compelled to
8 sign it as is, so I did.

9 Q. But, you felt comfortable making some
10 changes, right?

11 A. Only on the one thing that I felt
12 definitively, if it was submitted to the court, I
13 could not testify to it as being true.

14 Q. Okay. So let's look at that again
15 because I do want to make sure we walk through all
16 of it. And if there's anything in here, sitting
17 here today, that you say is not true, I want to
18 make sure we get that on the record.

19 So earlier, we had looked at the first
20 two pages, and you testified that there was nothing
21 in there that was untrue.

22 So I think -- I guess I am going to have
23 to walk through each of these on my screen for you
24 to be able to see them. But, I do want to go
25 through this whole thing and make sure we cover any

Auerbach

areas that you don't believe are accurate.

A. It's not that I don't believe are accurate. I think it's the context around some of it. If it's not presented in a way where there's maybe an explanation, it could be interpreted more than one way.

I didn't feel I was given the opportunity, given how quickly they wanted to move forward, to be able to have this conversation with leadership. And evidently it was because the decision was made to fire me, and I would never have had that opportunity to review it.

Q. Okay. So is it fair to say that there are some areas where you would have preferred to provide additional context in this affidavit, but there's nothing in here that's untrue?

A. I would say that that's accurate.

Q. Let's go through page by page and just make sure that that's still the case that there's nothing in here that's inaccurate. And then I think --

MS. COOPER: I do have to say, I absolutely have to end it at 4:00 today. And if we're going to carry on past that, like I

1 Auerbach

2 said, I want to keep the deposition open
3 anyhow. If we can pick a new time to
4 continue, that would be ideal.

5 MS. SIEGMUND: Okay. I hope we can -- I
6 hope this will not take more than five minutes
7 and then we'll pick a good time to continue.

8 A. So, for example, No. 3 -- sorry.

9 Q. I know we discussed earlier that you
10 said there was nothing on the first two pages that
11 was inaccurate; is that still right?

12 A. Well, so let me clarify. For No. 3, for
13 example, where it says, When Lombardo started with
14 Chmura in 2015, he had never worked in the industry
15 before and had no preexisting customer
16 relationships.

17 I don't discernibly know that. I have
18 no idea, but, that's what leadership wanted
19 included. I presumed they know that to be
20 accurate.

21 Let's see if there's anything else.
22 Yeah. So the other part where it says that
23 30 percent off Chmura's regular subscription price
24 and frequently did so.

25 He did not frequently do that. He might

Auerbach

have done that prior to me being there, but I don't think there's even one example of my time there where that happened.

But, again, this wasn't something I felt comfortable arguing with leadership because I knew it would not result in a good outcome for me.

Q. When they presented this statement to you, did they tell you that you needed to make sure it was true?

A. That really wasn't their concern. In fact, I don't think anybody said, Make sure it's completely true.

The direction I got from Greg Chmura was, review it, sign it, get it notarized and bring it in Monday.

I had reached out to him over the weekend to express concerns saying that there were things in there I did not agree with and things that I thought were flat out wrong.

His response was very short with me to simply say, Make the corrections you need to make and then bring it in on Monday.

So I had made the one big correction I knew definitively needed to be deleted. And then I

Auerbach

intended to speak with him on Monday, and he was not interested in having the conversation, because again, they had already intended on shutting off my access and letting me go.

So there wasn't the opportunity for me to express for No. 3 or No. 5 reservations I had. I felt very, very pressured to go and get it signed that morning. And, of course, as I stated, when I did and returned it, they immediately fired me, which indicates why they were so reluctant to have a more in-depth conversation with me about this statement.

Q. Okay. So we just discussed No. 3 and the word, Frequently, and No. 5 that you don't have personal knowledge of or not comfortable with, respectfully.

Is there anything else on this first page that you are not comfortable with?

A. On the first page? No.

MS. COOPER: Can we break at this point?

I really do have to get on another -- I have a really important meeting I have to attend.

And I apologize for that, but I have a hard stop at 4:00.

1 Auerbach

2 MS. SIEGMUND: I'm sorry. We really
3 need to finish this part today. We didn't
4 know ahead of time that you had a 4 o'clock
5 stop, so --

6 MS. COOPER: Well, I didn't think this
7 deposition -- the problem is, you sent out
8 subpoenas and didn't confirm with me at all
9 before picking a time. And we're up against
10 deadlines and everything else. I absolutely
11 have to get on a call at 4 o'clock and cannot
12 continue.

13 MS. SIEGMUND: Let's have --

14 MS. COOPER: I can resume at 5:30. I
15 cannot continue right now.

16 And I would like to ask Mr. Auerbach
17 some questions as well, which even with his
18 hard stop, there would not be time for.

19 MS. SIEGMUND: Is Mr. Powell able to sit
20 in just for -- I just need him to finish
21 reading this thing going through, making sure
22 that the rest of it is accurate.

23 MS. COOPER: I don't know, and I don't
24 have time to contact him. I don't think he
25 does -- I don't think he can, though. And

1 Auerbach

2 he's local counsel without a whole lot of
3 knowledge on this yet. So he has been acting
4 as traditional local counsel.

5 MS. SIEGMUND: Mr. Auerbach, I know you
6 said you have a 4:30 stop. I don't want to
7 impose on your time, but I do just want to
8 finish this part of this today.

9 MR. POSEY: Would it be possible just to
10 resume tomorrow?

11 MS. SIEGMUND: Probably so.

12 Mr. Auerbach, what is your availability
13 tomorrow?

14 THE WITNESS: I would say basically the
15 same window. I have a hard stop tomorrow at
16 4:00. I'd prefer not to start earlier than
17 10:00, but I'm available as needed.

18 MS. SIEGMUND: Okay. We have Ms.
19 Peterson's deposition in the morning, right?

20 MS. COOPER: Can we go off the record?

21 MS. SIEGMUND: Penny, let's go off the
22 record.

23 (Discussion off the record.)

24 MS. SIEGMUND: Penny, I'd like a rough
25 draft.

1 Auerbach

2 MR. POSEY: We are going to be reading,
3 just to make sure that the exhibits are making
4 it into the deposition.

5 MS. SIEGMUND: So obviously, we are
6 leaving the deposition open so that we can
7 finish and Ms. Cooper can finish.

8 MS. COOPER: Thank you all very much. I
9 have to leave.

10
11 - - -

12 (Deposition concluded at 4:02 p.m.)

13 (Signature was not waived.)

14 (See attached errata sheet.)

15 - - -
16
17
18
19
20
21
22
23
24
25

Auerbach

CERTIFICATE

State of Ohio,)
) SS:
County of Cuyahoga.)

I, Penny Sherman, a Notary Public in and for the state of Ohio, duly commissioned and qualified, do hereby certify that the within-named witness, ELI AUERBACH, was by me first duly sworn to testify the truth, the whole truth and nothing but the truth in the cause aforesaid; that the testimony then given by him was by me reduced to stenotypy in the presence of said witness, afterwards transcribed by means of computer-aided transcription, and that the foregoing is a true and correct transcript of the testimony as given by him as aforesaid.

I do further certify that this deposition was taken at the time and place in the foregoing caption specified, and was completed without adjournment.

I do further certify that I am not a relative, employee or attorney of any party, I am not, nor is the court reporting firm with which I am affiliated, under contract as defined in Civil Rule 28(D), or otherwise interested in the event of this action.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal of office at Cleveland, Ohio, on this 13th day of May 2020.



Penny Sherman
Notary Public in and for
The State of Ohio.

My Commission expires October 6, 2023.